(23,433)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 858.

FLORIDA EAST COAST RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES, INTERSTATE COMMERCE COMMISSION, RAILROAD COMMISSIONERS OF FLORIDA, ET AL.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

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United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,

vs.

UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association, et al., Interveners.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the City of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Petition for Injunction.

Filed December 26, 1911.

In the Commerce Court of the United States.

TERM 1911.

No.....

FLORIDA EAST COAST RAILWAY COMPANY, a corporation, *Petitioner*,	)	*Petition for injunction, etc.*
vs.	)	
UNITED STATES, *Respondent.*	)	

To the Judges of the Commerce Court of the United States:

The Florida East Coast Railway Company, a corporation chartered and existing under the laws of the State of Florida, brings this its petition for an injunction against the enforcement of and for a decree setting aside and annulling a certain order of the Interstate Commerce Commission, decided and made on the sixth day of November, 1911, and more particularly mentioned hereinafter, and thereupon your petitioner complains and says:

1. That your petitioner is a corporation organized and existing under the laws of the State of Florida and owning a railroad entirely within the State of Florida; that your petitioner, however, is engaged in the transportation of passengers and property over and on its said railroads for persons and property passing through and over railroads in other States; and, by reason of being engaged in interstate transportation of the character mentioned in the various laws enacted by the Congress of the United States, your petitioner is, therefore, subject to said various acts in so far as they are not repugnant to the Constitution of the United States.

2. That the Interstate Commerce Commission is a commission created and established by and which now exists under and by virtue of an Act of Congress of the United States, entitled "An Act to Regulate Commerce," approved February 4, 1887, and various other acts amendatory thereof and supplementary thereto.

3. That your petitioner has ever since the construction of its road been engaged in the interstate transportation, among other traffic, of citrus fruits, vegetables and pineapples from points of production on the line of your petitioner's road to points outside of and beyond the terminus of your petitioner's line of road at Jacksonville, Florida, in other States of the United States; that, by reason of the character of the production of said citrus fruits, vegetables and pineapples, your petitioner has been compelled to go to great expense in constructing numerous sidetracks running into and beside the numerous orange groves, pineapple farms and vegetable farms, to the packing houses and to maintain said sidetracks and to transport and carry empty cars and place them in front of said packing houses, groves and farms and thereby save to the growers and shippers large sums of money that they would be required to expend in hauling their citrus fruits, pineapples and vegetables to the stations of this petitioner for shipment.

Your petitioner has been further compelled to annually rent large numbers of special cars, to-wit: refrigerator and ventilated cars, in which to pack and transport the said pineapples, vegetables and citrus fruits without charging the shippers anything extra for providing said cars; that your petitioner has not purchased an equipment of these particular kind of cars because they are only needed for a few months each year and the interest on the capital that would be necessary to purchase the number of cars necessary during these few months would far exceed the sum of rental paid for the hire of them and would impose upon the shippers a large additional annual fixed charge; that, in addition,

your petitioner would have to construct sheds in which to store the said cars during one-half of the year, additional sidetracks to place them on and would have to employ additional men to watch and guard said cars while they were not in use for transporting vegetables, pineapples and citrus fruits, and a further additional expense in insurance against fire; that during the fiscal year ending June 30, 1910, your petitioner paid $40,367.78 hire for these cars and during the fiscal year ending June 30, 1911, your petitioner paid $52,660.33 hire for these cars.

Your petitioner further says that the expense incurred, as hereinbefore set forth, had to be paid by your petitioner out of the rates allowed your petitioner by the State Railroad Commission of Florida and by the Interstate Commerce Commission, and was not in any way added to said rates.

Your petitioner further complaining says that for many years prior to the fiscal year ending June 30, 1910, your petitioner's line of railroad had an annual deficit between its receipts and its expenditures and fixed charges; that no dividends whatsoever were paid on its capital stock for the past ten or twelve years; that in the year 1908 the Florida Fruit & Vegetable Shippers' Protective Association begun proceedings before the Interstate Commerce Commission to compel your petitioner and other roads within the State of Florida to reduce their rates on citrus fruits, vegetables and pineapples from shipping points in Florida to Florida basing points, the base point of your petitioner being Jacksonville, Florida, and, after the taking of testimony and argument of counsel, the Interstate Commerce Commission on the 25th day of June, 1908, held and decided that the rates then charged by your petitioner were not unreasonable, and confirmed and ratified those rates.

4. And further complaining your petitioner says that, after deciding that the rates of your petitioner were reasonable on citrus fruits, pineapples and vegetables, in

the year 1910 the Florida Fruit & Vegetable Shippers' Protective Association made its complaint because of the rates charged by your petitioner on pineapples claiming that, by reason of the competition with Cuba, the pineapple growers were suffering loss and demanding that the rates should be fixed at such figures as would enable the said growers to make a reasonable profit on their products; that the said Interstate Commerce Commission refused to accede to this demand; but, in view of the competition with Cuba, ordered your petitioner to reduce its rates on pineapples which resulted in an aggregate loss of 4c per crate to your petitioner; and the following year, viz: during the fiscal year ending June 30, 1911, owing to a freeze affecting the pineapple crop and to the reduction of revenue from that source ordered by the Interstate Commerce Commission, your petitioner's revenue from pineapples was reduced $153,000 below the revenue derived from this source during the fiscal year ending June 30, 1910; that your petitioner cheerfully obeyed the order of the Interstate Commerce Commission to reduce the rates on pineapples out of sympathy for the growers and from a desire to aid them, although considering said order unjust and unreasonable.

5. And further complaining your petitioner says that, encouraged by the success in obtaining a reduction in rates on pineapples, the Florida Fruit & Vegetable Shippers' Protective Association, by their supplemental petition filed with the Interstate Commerce Commission, petitioned for a reduction of the rates on citrus fruits and vegetables so that the rates should be made the same as on pineapples; that your petitioner appeared before the said Interstate Commerce Commission and resisted said petition and submitted to said Interstate Commerce Commission the facts as to its earnings and that these rates, if reduced, would be confiscatory in their character and would result in your petitioner not being able to pay the small interest it was paying on its bonds and further prevent your petitioner from earning any dividend

whatsoever on its capital stock. But the said Interstate Commerce Commission, regardless of the facts in the premises and of your petitioner's right to earn a reasonable profit on its investment and on the value of its property, by its order and decree, dated November 6, 1911, ordered your petitioner to reduce its rates on fruits and vegetables from the present rates so as to incur a loss to your petitioner of $98,610.86 annually on vegetables alone and a loss of $32,172.27 annually on citrus fruits, or an aggregate loss annually of $130,783.13, based upon the number of crates of citrus fruits and vegetables being the same as during the fiscal year ending June 30, 1911; but your petitioner says that the volume of citrus fruits and vegetables fluctuates and varies largely; that, owing to freezes and floods, your petitioner cannot have any certainty or assurance that the volume will be as great one year as another; that your petitioner is informed and believes that the number of crates of pineapples and citrus fruits for the pending fiscal year will not be as great as it was during the last fiscal year and it is also very doubtful if the volume of vegetables will be as great, as will more fully appear in the statements and exhibits annexed to this petition and which exhibits and statements your petitioner prays may be taken as part of this petition.

6. And further complaining your petitioner says that, as shown by its annual reports, while its general business has increased steadily, its expenses have increased almost to the same amount; that after the said Interstate Commerce Commission had required a reduction of the rate on pineapples your petitioner voluntarily equalized its rates on vegetables and reduced the rates at many points and also reduced its rates on other freights to an aggregate of about $90,000 per annum; that, notwithstanding these voluntary reductions of rates, your petitioner is now required by the said order of the Interstate Commerce Commission to make such further reduction as will inflict upon it a loss annually of $130,873.13,

thereby threatening your petitioner with a deficit after paying interest on its general mortgage and income bonds instead of the small surplus hereinbefore set forth, as will more fully appear in the statements and exhibits annexed to this petition, which exhibits and statements your petitioner prays may be taken as part of this petition.

7. And further complaining your petitioner says that, if it is required to obey the said order of the said Interstate Commerce Commission to reduce its rates on citrus fruits and vegetables pending the final determination of this suit, your petitioner will suffer and sustain irreparable damage in that it will be required to transport citrus fruits and vegetables at less than a reasonable rate; that the great majority of the shippers of citrus fruits and vegetables on the line of the Florida East Coast Railway are persons of small means; that many of them rent land, make a crop and move away after making it; that many others own less than the amount of property, real and personal, exempt under the Constitution and laws of the State of Florida from execution or sale for debt; that the shippers number approximately 2,834; that, if your petitioner is required to obey this order pending this suit and shall prevail in this suit it could not recover from the shippers the sums it will have lost by reason of the reduction of rates; that to collect from the shippers the difference between the present rates and those ordered by the Interstate Commerce Commission would and will involve a multiplicity of suits, the cost of bringing which, with attorney's fees and expenses, would aggregate in the large majority of cases more than the amount recovered and that but an infinitesimal portion of the judgments could be recovered from the shippers.

8. And further complaining your petitioner says that it was contended before the said Interstate Commerce Commission that the said Interstate Commerce

Commission should not consider the extension of your petitioner's line of railroad from Miami to Knights Key on the ground that said extension was not self-sustaining and thereby afforded but little or no support to your petitioner's line of road. But your petitioner says that this statement was not correct; that your petitioner presented to the said Interstate Commerce Commission facts showing that your petitioner's line of railroad for the fiscal year ending June 30, 1910, had made a net gain of $342,739.45 by the business, freight and passenger, over the extension after deducting the proportion applicable to the extension on a mileage basis, and that exclusive of mail and express matter. And your petitioner says that the said line of railroad from Jacksonville to Miami during the fiscal year ending June 30, 1911, had a still greater net gain, by reason of said extension, than for the previous year; all of which will more fully appear in the statements and exhibits annexed to this petition, which statements and exhibits your petitioner prays may be taken as part of this petition.

And your petitioner says it is not reasonable or just to ignore the extension from Miami to Knights Key in considering the rates applicable to freights on any part of said line as the entire line forms one integral whole and can only be fairly considered as an entirety; that nearly 20 per cent of the entire vegetable crops shipped over the Florida East Coast Railway comes from the extension South of Miami and an appreciable percentage of the crop of citrus fruits, and that the business of the extension and the benefits conferred upon the balance of the road by it is steadily and annually increasing.

9. And further complaining your petitioner says it is not reasonable or just to consider the rates on freights and passengers on the line of its road with the rates on the Seaboard Air Line Railway and the Atlantic Coast Line Railroad, the two other principal lines of railroad in the State of Florida; that these lines of railroad receive and transport large quantities of cotton, phosphate

rock, lumber, timber, naval stores, fuller's earth and kaolin with the enormous return freight resulting from these products; that, on the contrary, the Florida East Coast Railway has no cotton, phosphate rock or kaolin on the line of its road and but a very small amount of naval stores and that its business in timber and lumber is small and purely local; that the average proportion of freight to passenger, express and mail matter on the line of these other roads is between 66 per cent and 70 per cent while the average on your petitioner's road is but a little over 51 per cent.

Your petitioner further sets forth that in addition to these freights carried by the other lines of road named they also transport a larger amount of citrus fruits and vegetables than are transported on the line of your petitioner's road, the only advantage of your petitioner being in the transportation of pineapples, of which the other roads transport but little, but this advantage is more than made up by the large amount of watermelons transported by the other said roads while there are but few watermelons grown on the line of your petitioner's road. All of which will more fully appear in the statements and exhibits annexed to this petition, which statements and exhibits your petitioner prays may be taken as part of this petition.

10. And further complaining your petitioner says that its entire net earnings did not amount to 4 per cent on the cost of the road to Knights Key; that the legal rate of interest in the State of Florida is 8 per cent with power to contract to pay as high as 10 per cent; that the ordinary and current rate of interest in the State of Florida is 8 per cent; that your petitioner has not yet earned and is not now earning a reasonable profit on the money actually invested in its said road or on its present value; that your petitioner is entitled to earn at least 8 per cent on the present value of its property but that your petitioner has been contented to await for an enlargement and extension of business that would en-

able it to earn such reasonable profit and to pay reasonable dividends on its capital stock. And your petitioner respectfully represents that it is unreasonable to fix rates on freights at figures that will not enable your petitioner to pay the interest charges on its first mortgage bonds and on its general mortgage income bonds, as hereinbefore set forth. All of which will more fully appear in the statements and exhibits annexed to this petition, which exhibits and statements your petitioner prays may be taken as part of this petition.

11. Your petitioner further says that the liabilities of the Florida East Coast Railway Company are as follows:

1. Common stock, $5,000,000, which was purchased at par and on which no dividends whatsoever have been or are being paid.

2. First mortgage bonds outstanding, $10,000,000.

3. General mortgage income bonds, $20,000,000.

The interest on the first mortgage bonds is 4½ per cent and the interest on the general income bonds 4 per cent; that your petitioner's entire net earnings for the fiscal year ending June 30, 1911, after deducting taxes, hire of equipment, and rentals were $1,295,622.14, out of which your petitioner paid $450,000 interest on the first mortgage bonds and $800,000 interest on the general mortgage bonds, leaving a balance to profit and loss of only $45,622.14, to which must be added interest earned on deposits, $21,507.69, making an aggregate balance of profit and loss of only $67,129.83, as shown by the sworn report of your petitioner for the fiscal year ending June 30, 1911. All of which will more fully appear from the statements and exhibits annexed to this petition, which statements and exhibits your petitioner prays may be taken as part of this petition.

12. And further complaining your petitioner says that its line of railroads extends from Jacksonville,

Duval County, Florida, to Knights Key, Dade County, Florida, and is now almost completed to the City of Key West in Monroe County, Florida, together with several branches, to-wit: a branch from Jacksonville, Duval County, to Mayport in Duval County; another branch from New Smyrna in the County of Volusia to Orange City Junction in Volusia County, Florida; another branch from Titusville in Brevard County to Sanford in Orange County, Florida; also a short branch from East Palatka to Palatka in Putnam County, Florida; the San Mateo branch in Putnam County; the Ormond branch in Volusia County and Palm Beach Branch in Palm Beach County, Florida.

Your petitioner says that the line of road from Jacksonville to Miami was first completed at a cost to your petitioner of over $18,000,000; that the present value of the line to Miami, including right-of-way, terminals, depots, equipment, road-bed and rails, is not less than $30,000,000; that your petitioner's line of road has been further extended from Miami to Knights Key, a total of 110 miles, and when completed to Key West will make a total of 520.91 miles from Jacksonville, which, with 94.63 miles of branches and 12.93 miles under contract, will constitute a total mileage of 628.47 miles. The total mileage of the road now in operation from Jacksonville to Knights Key and the branches aggregates 583.47 miles.

And your petitioner further says that the cost of the said road from Jacksonville to Miami and Knights Key and the branches aggregate $31,928,741.92; that the entire cost of the road and equipments from Jacksonville to Miami and branches, exclusive of the extension was $25,897,359.20. All of which will more fully appear from the statements and exhibits annexed to this petition, which your petitioner prays may be taken as part of this petition.

13. And further complaining your petitioner says that the pineapple and citrus fruit crop for the present fiscal year will be still smaller than it was for the fiscal

year ending June 30, 1911, and that at the present rates your petitioner will suffer a heavy loss in income from this source; that the indications are that the vegetable crop will also be smaller than it was during the last fiscal year and that a reduction of its revenue from this source will also be large; that, if the rates ordered by the Interstate Commerce Commission under date of November 6, 1911, are enforced the aggregate loss of income to your petitioner will largely exceed $131,000 and that only a large increase in its passenger business and in its freight business from other sources will enable your petitioner to pay the small interest paid on its bonds and avoid a deficit.

14. And further complaining your petitioner says that, in addition to the reduction of rates made by it, by order of the Interstate Commerce Commission, on citrus fruits, vegetables and pineapples and on other classes of freights, this petitioner has been compelled to give large increases of wages to its employes, the advanced price of living compelling this increase so as to enable your petitioner to keep skilled and efficient men in its employ at living rates of wages, which increase your petitioner estimates at not less than an aggregate of $150,000 per annum; that, in addition, during the present fiscal year your petitioner has been compelled to construct over twenty miles of sidetracks so as to prevent delay in the passage of trains past each other, imposing upon this petitioner a large expenditure of money and an additional annual fixed charge; that the proportion of freight earnings to other earnings from passenger, mail and express matter is much lower than the average of other railroads; that, owing to the character and classes of equipment necessary and the fact that the great bulk of your petitioner's passenger business is during four or five months in the year, the expense of transporting passengers on your petitioner's line of road is very large and but little profit to your petitioner; that, excepting a small amount of lumber and naval stores business, prin-

cipally on the Northern end of your petitioner's road, the only freight produced on the line of petitioner's road consists of citrus fruits, vegetables and pineapples; all of which centers at the Southern end of your petitioner's road, while at the Northern end there are very few vegetables and no pineapples produced, thereby imposing upon your petitioner large expense in transporting trains of empty cars of special kinds long distances, the ordinary freight cars being unsuited for the transportation of vegetables, citrus fruits and pineapples.

15. And further complaining your petitioner says that it has operated and conducted the business of said road with the most rigid regard to economy in the purchase of all material and in the employment of competent and efficient men and that no further reduction of expenses is possible except at the sacrifice of efficiency and the proper management of the road with due regard to the safety of person and property and the prompt transportation of freight and passengers; that, instead of reducing expenditures, the enhancement of values and the increased wages demanded by skilled and competent men call for an increase of expenditures; that the expenditures of the Florida East Coast Railway Company are relatively smaller than those of any other railroad in the South or, so far as your petitioner can ascertain, in the United States as compared with its mileage and the amount of business done.

16. And further complaining your petitioner says that of a total of 2,100,849 crates and 191,150 barrels of vegetables transported over this petitioner's line of road during the fiscal year ending June 30, 1910, 2,018,899 crates were transported from distances 320 miles and more and, under the order of the said Interstate Commerce Commission dated November 6, 1911, said rates have been reduced still further from the voluntary reduction made by your petitioner, as will more fully appear from the table of rates in existence prior to July 15, 1910,

and the rates voluntarily put in effect on said date and now in effect, showing a large reduction in rates from points where the great mass of vegetables originate; that with regard to citrus fruits said rates were voluntarily reduced on the 15th of July, 1910. All of which will more fully appear from the exhibits and statements hereto annexed, which exhibits and statements your petitioner prays may be taken as part of this petition.

17. And further complaining your petitioner says that during the present year of 1911 your petitioner has been compelled to expend about $400,000 in the construction of about twenty (20) miles of additional sidings and in the construction of yards on its line of road, about $400,000 in the purchase of locomotives for its line of road, about $200,000 for the purchase of passenger equipment and about $160,000 for the purchase of additional ordinary freight cars, or approximately $1,160,000, thereby incurring an annual additional charge of over $55,000 per annum; that these expenditures have been rendered absolutely necessary to enable your petitioner to properly and efficiently operate said road; that the expenditures for additional sidings and yards have been made largely, and in many instances exclusively, for the benefit of the growers and shippers of pineapples, citrus fruits and vegetables, and that the interest on these necessary expenditures can only be paid by your petitioner being permitted to earn a revenue sufficient for the purpose; that in addition to these figures your petitioner has expended the further sum of $207,807.73 in additional betterments up to the 31st of October, 1911; all of which expenditures have been for the use and benefit of the line of road from Jacksonville to Miami and its branches.

Annexed hereto are exhibits embracing statistics showing the condition and earnings of the road, its financial condition generally, affidavits of its officers, comparative statements of rates and a copy of the order of the said Interstate Commerce Commission, dated the 6th day

of November, 1911, which your petitioner prays may be taken as part of this petition and application for temporary restraining order.

18. Wherefore your petitioner says that for the reasons hereinbefore set forth the said Interstate Commerce Commission has grievously erred in its said order dated November 6, 1911, to the great wrong and injury of your petitioner in manner and form as hereinafter set forth.

19. That the said Interstate Commerce Commission erred in its order dated the 6th day of November, 1911, in deciding that the same rates on vegetables and citrus fruits ordered for the Seaboard Air Line Railway and the Atlantic Coast Line Railroad in the State of Florida would be just and reasonable to apply to this petitioner in that the conditions existing on the line of the Florida East Coast Railway are entirely different from those existing on the other main roads and to which the attention of the Interstate Commerce Commission was duly called, namely: that the Seaboard Air Line Railway and the Atlantic Coast Line Railroad receive and transport over their lines of road large quantities of kaolin, phosphate rock, amounting to three million tons per annum, and cotton, with a large return freight; none of which are transported over the line of this petitioner.

20. That the Interstate Commerce Commission erred in its order dated November 6, 1911, in holding and deciding that in establishing carload rates from the base points and thus permitting the movement of small lots up to the base points and the consolidation at such points had not been realized as so far such has not been the result for, as a matter of fact, the loading of cars from points of origin is heavier on the Florida East Coast Railway than formerly.

21. That the Interstate Commerce Commission erred in its order, dated November 6, 1911, in refusing to

take into consideration the entire cost and present value of this petitioner's property or the financial condition of petitioner's railway and in refusing to permit the rates to remain as they had been fixed by this petitioner under the authority of the State Railroad Commission of Florida and which the said Interstate Commerce Commission had declared reasonable so that this petitioner could continue to earn the very small and insufficient profit which it has been and is making and thus avoid a deficit in its business or deprive it of the power to pay the small rate of interest on its income bonds.

22. That the said Interstate Commerce Commission erred in its order dated the 6th day of November, 1911, in holding that at the present time but little traffic originates South of Miami; that as a matter of fact during the fiscal year ending June 30, 1911, there were 361,599 crates of vegetables, 63,545 crates of oranges shipped from points South of Miami in addition to other freights originating South of Miami; and your petitioner says that the entire business originating on the line South of Miami, both in freight and passenger business, going over the line South of Miami will compare favorably with the business of any of its branches.

23. That the said Interstate Commerce Commission erred in its order, dated November 6, 1911, in basing its decision against your petitioner and reducing its rates on the fact that any difference exists between the Florida East Coast Railway now and at the time of rendering the previous decision. The Florida East Coast Railway Company has never been merged with any other railroad line running North of Florida, but is still operated as an independent railroad having no line of road beyond the limits of the State of Florida, not owning, operating or in any manner connected with any line of railroad outside the State of Florida, either by purchase, lease, consolidation or merger; that it has to maintain and does

maintain a separate and distinct organization and that the expense of maintaining and operating its line of road has not to be pro-rated with any other lines beyond the limits of the State of Florida.

24. That the Interstate Commerce Commission erred in its order, dated November 6, 1911, in reducing the rates on vegetables and citrus fruits, as set forth in its said order, thereby imposing upon your petitioner a loss of over $130,000 even if the crop of pineapples, citrus fruits and vegetables should prove as large during the present and subsequent fiscal years as during the last fiscal year, although, in truth and in fact, the crop will not be as large; that, by reason of the unprecedentedly large crop of vegetables during the fiscal year ending June 30, 1911, on the line of your petitioner's road and on the other lines of railroad in the State of Florida, the markets became so glutted as to reduce the price to less than the cost of picking, packing and freight.

25. That the said Interstate Commerce Commission erred in its order, dated November 6, 1911, in taking into consideration the difference in cost of construction between the lines South of Miami and North of Miami; that your petitioner is entitled to have the entire cost and present value of its entire line of road considered in determining rates, that the cost of construction or the business done on any particular section of the railroad cannot be considered in establishing rates but that the entire road, its volume of business, necessary operating expenses and present value should be considered as an entirety.

26. The premises considered your petitioner prays that a final decree may be entered herein enjoining, setting aside and annulling the said order of the Interstate Commerce Commission, dated the 6th day of November, 1911, and further that a temporary injunction may issue

herein enjoining or suspending said order and any and all proceedings thereunder pending a final determination of this suit; and that your petitioner may have such other and further relief as in equity and justice may to this Court seem meet and proper.

And your petitioner will ever pray, etc.

(Signed) ALEX ST. CLAIR-ABRAMS,
(Signed) FRED C. BRYAN,
Solicitors for Petitioner.

Jacksonville, Florida, December 19th, A. D. 1911.

STATE OF FLORIDA,
COUNTY OF DUVAL.

Personally appeared before me, the undersigned, Joseph R. Parrott, who, being duly sworn, deposes and says that he is the President of the Florida East Coast Railway Company, the petitioner named in the foregoing petition; that he has read the contents of said petition and that the facts and allegations in said petition contained are true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes them to be true.

(Signed)
JOSEPH R. PARROTT.

Subscribed and sworn to before me
this 19th day of December, A. D. 1911.
(Signed)
LOU BECCA PINNELL,
Notary Public State at Large.
My Commission expires Jan. 27th, 1915.
(Seal)

Exhibit 1.

No. 1168.

FLORIDA FRUIT & VEGETABLE SHIPPERS' ASSOCIATION

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

No. 3808.

RAILROAD COMMISSION OF THE STATE OF FLORIDA

v.

SEABOARD AIR LINE RAILWAY ET AL.

Submitted May 25, 1911. *Decided November* 6, 1911.

From the facts disclosed by the record: *Held*, That the rates upon pineapples, citrus fruits, and vegetables which would result from the application of the distance tariff given in the report herein upon the lines of the Florida East Coast Railway Company, the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railway from points in Florida up to Jacksonville, when destined for points beyond in other states, would be just and reasonable; that they ought not to be exceeded for the future; and that the present rates of those carriers are unjust and unreasonable to the extent that they exceed such rates.

Louis C. Massey for Railroad Commission of Florida.

A. A. Boggs for Florida Fruit & Vegetable Shippers' Protective Association.

R. Walton Moore for Seaboard Air Line Railway and Atlantic Coast Line Railroad Company.

Alex. St. Cair-Abrams for Florida East Coast Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner:*

No. 1168 is now before us upon a supplemental petition filed by certain shippers upon the line of the Florida East Coast Railway, which is the sole defendant in the present proceeding. The original complaint was against numerous defendants and involved a general attack upon the rates imposed for the transportation of fruits and vegetables from points in Florida to various consuming markets in all parts of the United States east of the Rocky Mountains. Those rates were then stated in two parts. There was first a gathering charge from the point of origin to what were known as Florida base points, of which Jacksonville was the principal one, applicable to traffic destined beyond those base points; and second, a rate from the base point to the consuming destination applicable to traffic which had moved by rail up to the base point. The sum of these rates constituted the through charge.

In the original case the Commission examined the two sets of rates separately. It held that rates from the base points were excessive but approved as reasonable the rates then in effect from points of origin up to the base points. That holding applied to rates upon the Atlantic Coast Line and the Seaboard Air Line as well as upon the Florida East Coast Railway. *Florida Fruit & Vegetable Shippers' Protective Asso.* v. *A. C. L. R. R. Co.*, 14 I. C. C. Rep., 476.

In a subsequent supplemental proceeding instituted by pineapple growers located upon the Florida East Coast Railway, who insisted that Cuban competition was imperiling the existence of their industry, and that the Florida East Coast Railway was maintaining rates which discriminated against the Florida pineapple, we further considered the gathering charge upon pineapples from points of production upon the Florida East Coast Railway to Jacksonville. *Florida Fruit & Vegetable Shippers' Asso.* v. *A. C. L. R. R. Co.*, 17 I. C. C. Rep., 552.

The gathering rates approved by the Commission in the original case had been in all instances any-quantity rates. The Commission now held in this supplemental proceeding that a distinction should be made in case of pineapples between carload and less-than-carload shipments and established a distance tariff upon the Florida East Coast Railway for the transportation of pineapples in carloads and less than carloads from the various points of origin to Jacksonville when for shipment beyond.

Shippers upon the Florida East Coast Railway now ask in the petition before us that the same rates which were established for pineapples be applied to citrus fruits; and, further, that proportionate rates per 100 pounds be applied to vegetables. In this proceeding the railroad commission of the state of Florida has intervened in favor of the complainants.

No. 3808 is a proceeding by the railroad commission of Florida against the Atlantic Coast Line and the Seaboard Air Line railways to compel the establishment of gathering rates by these railroads upon pineapples, citrus fruits, and vegetables upon a substantially lower scale than is now in effect. Schedules are filed with the petition setting forth in detail the present rates and the rates prayed for. The present rates are in all cases any quantity; those asked for are both carload and less than carload. In few, if any, instances are the rates prayed for higher than would result from the establishment of the distance schedule applied to pineapples upon the Florida East Coast Railway; in many instances they are materially lower.

It will be seen, therefore, that in these two proceedings all the gathering charges in the entire state of Florida, except the rates on pineapples now in force upon the Florida East Coast Railway are under attack, and that these proceedings are instituted by or have the support of the railroad commission of that state.

It should be noted here that to-day no base points are used in stating these rates from points of origin upon either the Seaboard Air Line or the Atlantic Coast Line,

the rate named being a through rate from the point of origin to destination; but this through rate has been in all cases constructed by adding together the rate established by us from the base point and the rate approved by us to the base point. If, therefore, we should be of the opinion that these gathering charges were too high it would involve in some form a reduction of the through rate upon those lines by the amount of our reduction of the former gathering charges. Upon the Florida East Coast Railway the two rates are still stated separately.

The statute of Florida requires the railroad commission of that state to inquire into the reasonableness of interstate rates applying to the movement of traffic into and out of the state. If, afer investigation, the commission is of the opinion that such rates are unreasonable it is made its duty to apply to the railroads operating within the state for a modification of these interstate tariffs; and if no such modification can be obtained and it still seems to the commission that the rates are unreasonable that body is instructed to institute proceedings before the Interstate Commerce Commission.

Numerous complaints were made to the railroad commission of Florida that these fruit and vegetable rates up to the base points were excessive, and that commission, for the purpose of informing itself, held investigations in all parts of the state where these defendants operate.

It found a general feeling among growers that the rates were extravagant, for the reason apparently that the industry under the present rates was not sufficiently profitable. From its investigation it reached the conclusion, as stated by its chairman, that these rates were too high. It therefore took the matter before the railroads interested and, failing to obtain satisfaction, filed its complaint No. 3808 and intervened in support of the supplemental petition which had already been filed in No. 1168.

It appeared in the original case that the gathering charges there assailed as unreasonable had been ap-

proved by the railroad commission of the state of Florida, but nothing appeared as to the circumstances under which that approval had been given. The chairman of the commission stated upon the hearing of the present proceeding that these rates were established in 1902, that they were the result of negotiation and compromise between the railroads and the Florida railroad commission, that they were at that time fairly satisfactory to the commission, but that he and his associates were of the opinion that the volume of business had so increased since then that the rates then fixed should be reduced. This, and the alleged depressed state of the industry seem to have been the controlling reasons which induced the Florida commission to embark upon these proceedings.

The original case was heard in the spring of 1908 and was disposed of upon the basis of conditions then existing. This Commission states in its report that the rates in force had been approved by the Florida commission, and that circumstance may have somewhat influenced us in our approval of the gathering schedules at that time; but the opinion further stated that it was our duty, notwithstanding the approval of the state commission, to give these rates an independent examination, which was done at considerable length. We instituted a comparison between the rates themselves and other similar rates elsewhere existing; we inquired very fully into the conditions under which these fruits and vegetables were produced and marketed; we examined the financial condition of these railroads and the result of their operations in the state of Florida. From all this we concluded that while these gathering rates were higher than would perhaps be reasonable upon railroads where the volume of business was greater and the net financial result more favorable, still they could not be deemed excessive in view of the circumstances under which the service was rendered.

This conclusion was reached less than three years ago. No material change has taken place since then so

far as this record discloses which would lead to a different conclusion if the same subject were before us to-day. The volume of business transacted has increased, but the expenses of operation have also increased to an extent which offsets the greater amount of business. It may be true that the condition of the various industries served is, on the whole, somewhat less flourishing to-day than then, but even if this were clearly shown we would not for that reason alone feel that these rates should be reduced. As has been frequently said in cases of this kind, we can not undertake to establish freight rates which will insure the production of these fruits and vegetables at a profit. Too much depends upon the state of the crop and the market. These rates can not be varied from year to year with the fluctuating condition of these industries. A reasonable rate should be established and continued so that both the shipper and the railway may know what to depend upon. There is nothing in this record which would call for a reconsideration of our former conclusion if exactly the same question were now before us.

There is, however, a material difference in one respect between now and then. When we decided the original case, rates up to the gathering point were in all cases any quantity and in most instances this was also true from the base point to destination. In our first order in No. 1168 we established carload rates upon citrus fruits and pineapples from base points to destination which were lower than less-than-carload rates and we suggested that carload rates be also established from base points on vegetables. This suggestion was not accepted by the carriers, and as a result supplemental proceedings were brought asking the Commission to order the establishment of carload rates upon vegetables, which was done. *Florida Fruit & Vegetable Shippers' Protective Asso.* v. *A. C. L. R. R. Co.*, 17 I. C. C. Rep., 552.

There are, therefore, in effect to-day by the order of this Commission carload rates upon both fruits and vegetables from base points. No carload rates, or at least

none which need be mentioned, are in effect up to the base point upon the Atlantic Coast Line and the Seaboard Air Line. None were in effect upon the Florida East Coast until our order established such rates upon pineapples. Since then that company has filed carload and less-than-carload rates upon citrus fruits and vegetables, but these rates are higher than those named by us for pineapples.

It appeared in the original case that citrus fruits to some extent, and vegetables to a much greater extent, were shipped in small lots to Jacksonville and there reloaded for movement beyond. It was our impression in establishing carload rates from the base point that this would permit the movement in small lots up to the base point and the consolidation at such point, and that the carload movement would in fact be mainly beyond the base point. Such has not been the result. In order to obtain the carload rate beyond the base point it seems to be necessary for the shipper, in actual practice, to present a full carload at the point of origin, and from this it follows that the movement up to the base point at the present time is entirely different from what it was when we approved these any-quantity rates. At that time the loading was by the carrier; now it is mainly by the shipper. The loading of the cars from the point of origin to the base points is much heavier now than formerly. In 1907 the average loading of citrus fruits and pineapples upon the Atlantic Coast Line up to the base point was 215 boxes. In 1910 this loading had increased to 279 boxes. In case of vegetables the increase is even more marked. The number of cars now required to transport the same amount of this traffic from points of origin to base points would be materially less than in 1908. Otherwise stated, it costs the shipper more to handle his business to-day and it costs the railroad less.

It should be still further borne in mind that from points upon the Seaboard Air Line and Atlantic Coast Line there are to-day through carload rates which exceed the carload rate established by the Commission from the

base point by the amount of the any-quantity rate up to the base point approved by us formerly. It would seem to be evident that under the circumstances and upon the basis of our former holding carload rates should be established to-day up to the base point which are less than the any-quantity rates formerly approved and that the through carload rates from originating points upon the Atlantic Coast Line and the Seaboard Air Line should be constructed by adding to our rate from the base point, not an any-quantity rate, but a proper carload rate from the point of production up to the base point.

It is evident that this might be arrived at in two ways: We might establish carload rates less by a certain amount per box and per crate than the present any-quantity rates, or we might apply to all fruits and vegetables a distance tariff like that imposed in case of pineapples upon the Florida East Coast Railway.

The present any-quantity rates upon the Atlantic Coast Line and the Seaboard Air Line are not constructed exactly upon a distance scale, although they are approximately. It was said upon the hearing that the rates of these two carriers so interlaced with each other that to apply a distance tariff in all cases would be to force upon them rates in some instances unduly low. But the effect of such a scale of rates would be to apply from each locality by the short line whatever rate its distance from the base point gave it; and while we ought to consider the general effect upon the revenues of these carriers of the establishment of a uniform distance scale, the mere fact that some particular rate would be somewhat advanced or reduced in comparison with other rates is no valid objection to that course.

It was said that the present rates had been agreed upon by the railroads and the Florida commission in view of these competitive conditions and that the relation of rates was satisfactory. It is also true that upon this hearing no particular locality was complaining of its rates as compared with other localities; but since the conclusion of the hearing the Commission has received

in several instances petitions from different points of production insisting that the rates from those points were too high as compared with other points, and the proposed schedules of the Florida commission suggest a much greater reduction from present rates at more distant than at near-by points.

The movement of these fruits and vegetables is continuous from the point of origin to destination and the distance is very considerable, being 1,000 miles and over. Ordinarily in such cases comparatively slight differences in distance between originating points are not reflected in the rate. Here, however, the rate rapidly increases as the point of production is removed from the base point, and this presents an anomaly in rate making which perhaps calls for explanation.

As already appears from the previous reports in this case these Florida lines up to what are known as base points were originally constructed and at first operated as independent railroads. The rates fixed by these lines were substantially the local rates from producing points to Jacksonville, from whence traffic could be handled north by either rail or water to the markets upon the north Atlantic coast, and increased with the distance as local rates for hauls of that length properly might. As time went on the Florida lines were merged with lines north of the base points, and extensive markets were opened in the middle west which were reached through the Ohio River gateway, so that the service was in all its elements through transportation, but the rates still continued to be made and published by naming the gathering charge up to the base point and a delivering charge beyond.

Citrus fruits apparently come into the market at about the same time from both the northern and southern sections of Florida, and the higher charge from the more southern section is therefore a disadvantage to the south as compared with the north, but, on the other hand, climatic conditions render production in the south less hazardous than in the north. In case of vegetables

the higher transportation charge from the south is more than compensated by the fact that vegetables grown in southern Florida come into bearing earlier than those grown farther north, and have therefore to an extent an exclusive and a better market.

Growers were asked whether in their opinion points of production in Florida should be blanketed or thrown into wide groups in analogy to the practice generally followed. Those in the north naturally objected, since this would involve an advance in their rates; those in the south would be glad of a lower transportation charge, but were of the opinion that under all the circumstances this would hardly be just. We share this opinion. Considering the manner in which these rates have been established and maintained in the past, remembering that the industry has developed and that land values have become fixed upon the present rate basis, it would in our opinion be wrong and uncalled for to revise these rates upon a group adjustment. Present rates are established in the main upon a distance scale, and we think any reduction of those rates should be upon the same basis.

A statement has been prepared showing with respect to every point in Florida upon the Atlantic Coast Line and the Seaboard Air Line the difference between the present any-quantity rate on citrus fruits and pineapples, and the rate which would result from establishing upon these lines the scale prescribed by this Commission for the transportation of pineapples upon the Florida East Coast Railway. An examination of that statement shows that to apply such pineapple scale to the transportation of pineapples and citrus fruits upon the Atlantic Coast Line and the Seaboard Air Line railways would result, in the main, in carload rates somewhat lower than the present any-quantity rates, but that such reduction would not exceed what should fairly be made in view of the carload movement.

A careful consideration of the whole situation leads us to the conclusion that the distance scale established for pineapples upon the Florida East Coast Railway

would be just and reasonable for the transportation of citrus fruits and pineapples to the base point upon the railroads of the Atlantic Coast Line and the Seaboard Air Line in the state of Florida.

The complainants contend that the same rate per 100 pounds should be applied to vegetables. The standard box of oranges weighs 80 pounds, the standard crate of vegetables 50 pounds, and the claim therefore is that five-eights of the rate fixed per box of citrus fruits should be applied per crate of vegetables.

Vegetables are usually a more perishable commodity than citrus fruits or pineapples and require greater expedition and care in the handling. The loading of vegetables is also lighter. The minimum fixed by us for citrus fruits was 24,000 pounds, while that for vegetables under ventilation was 21,000 pounds; under refrigeration, 17,500 pounds.

In fixing carload rates upon vegetables from base points to northern destinations we made the rate under refrigeration about 20 per cent higher than when under ventilation.

Taking everything into consideration we are of the opinion that the vegetable rate in carloads should be per crate approximately 70 per cent of the orange carload rate per box when under ventilation and 80 per cent under refrigeration. The less-than-carload rate may exceed the ventilated carload rate by 2 cents per standard crate, up to distances of 100 miles, beyond that by 3 cents.

It is earnestly contended in behalf of the Florida East Coast Railway Company that to apply these rates to that line would be confiscatory, and considerable testimony has been introduced and much discussion had upon both sides touching the financial condition of that company.

The Florida East Coast Railway extends upon the mainland down the east side of the state from Jacksonville as far as Miami, which was originally its terminus. From thence it has since been extended, crossing from the mainland to the Florida keys and running from key

to key south. The present southern terminus is at Knights Key, but the road is nearly completed to Key West.

The construction south of Miami has been in many places very expensive, so that the total cost of that portion nearly equals that of the line from Miami to Jacksonville. At the present time but little traffic originates south of Miamia, and the complainants contend that this division is operated at an actual loss. Hence, they urge, the cost of constructing this portion of the road which is of no benefit whatever to shippers from Miami and north ought not to be included in determining whether a given schedule of rates will yield a fair return upon the property. So computing, they insist that the present rates are too high and that those asked for by them will be ample.

Upon the other hand, the Florida East Coast Company insists that the entire cost of its property should be taken into account, but further claims that even if only the value of the property from Miami north is considered, still the proposed rates are confiscatory.

The financial condition of the Florida East Coast Railway has been referred to at considerable length in our previous opinions in No. 1168, and it would not be profitable to discuss that subject further here.

Taking that into account together with all the other facts and circumstances bearing upon the matter we are of the opinion that the rates suggested for the Seaboard Air Line and the Atlantic Coast Line in the state of Florida would be just and reasonable to apply upon the railroad of the Florida East Coast Railway Company. Those rates are already in effect upon pineapples and do not involve any extraordinary reductions from the rates on vegetables and citrus fruits which that company has voluntarily established.

These distance tariffs should in all cases apply to Jacksonville alone. The traffic originating upon the Florida East Coast of necessity moves through that point, and this is therefore the only base point with

reference to which the rates of that company have been established or published. Jacksonville is also the only base point which has been named in the tariffs of the Seaboard Air Line. The Atlantic Coast Line moves portions of its traffic through Gainesville and High Springs, and for convenience in operation formerly stated its gathering rates in certain cases to those points as well as to Jacksonville, but the rate itself was in all cases determined by the distance from Jacksonville.

It has been noted already that the present tariffs of all these carriers state a single rate from the point of origin to final destination, thus omitting all reference to any base point. The only effect of our order directing the maintenance of certain rates to the base point is to reduce by a corresponding amount this through rate, and to require the construction of these new carload and less-than-carload tariffs upon other base points than Jacksonville would result in reductions upon all these lines greater than those contemplated.

While carriers will be directed to establish these new gathering charges from points of production up to Jacksonville, when for beyond, they may, if they so elect, in lieu of publishing such gathering rates, establish through rates from the points of production provided those rates do not exceed the sum of the rates to and from the base point established by the Commission.

We are then of the opinion that those rates upon pineapples, citrus fruits, and vegetables which would result from the application of the distance tariff given below upon the lines of the Florida East Coast Railway Company, the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railway from points in Florida up to Jacksonville, when for beyond, would be just and reasonable, that they ought not to be exceeded for the future, and that the present rates of those carriers are unjust and unreasonable to the extent that they exceed such rates.

These rates are stated in cents per standard box of 80 pounds in case of pineapples and citrus fruits, and per

standard crate of 50 pounds in case of vegetables. The carload minimum is 24,000 pounds for pineapples and citrus fruits, 21,000 pounds for vegetables under ventilation, and 17,500 pounds for vegetables under refrigeration. Vegetables are sometimes shipped in other packages than standard crates, but we shall rely upon carriers to make a corresponding adjustment in such cases without attempting to name those packages and rates here.

Rates in cents per 100 pounds.

Distance (miles)	Pineapples and citrus fruits		Vegetables		
			Under refrigeration	Under ventilation	
	C.L.	L.C.L.	C.L.	C.L.	L.C.L.
Up to 40	9	12	7	6	8
Over 40 and up to 60	10	13	8	7	9
Over 60 and up to 80	11	14	9	8	10
Over 80 and up to 100	12	15	10	8½	10½
Over 100 and up to 120	13	16	10½	9	12
Over 120 and up to 140	14	17	11	10	13
Over 140 and up to 160	15	18	12	11	14
Over 160 and up to 180	16	19	13	11½	14½
Over 180 and up to 200	17	20	14	12	15
Over 200 and up to 220	18	21	14½	13	16
Over 220 and up to 240	19	22	15	13½	16½
Over 240 and up to 260	20	23	16	14	17
Over 260 and up to 280	21	24	17	15	18
Over 280 and up to 300	22	25	18	15½	18½
Over 300 and up to 320	23	26	18½	16	19
Over 320 and up to 340	24	27	19	17	20
Over 340 and up to 360	25	28	20	18	21
Over 360 and up to 380	26	29	21	18½	21½
Over 380 and up to 400	27	30	22	19	22
Over 400 and up to 420	28	31	22½	20	23
Over 420 and up to 440	29	32	23	20½	23½
Over 440 and up to 460	30	33	24	21	24
Over 460 and up to 480	31	34	25	22	25
Over 480 and up to 500	32	35	25½	22½	25½

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 6th day of November, A. D. 1911.

JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,
CHARLES C. MCCHORD,
BALTHASAR H. MEYER,
} Commissioners.

No. 1168.

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

No. 3808.

RAILROAD COMMISSION OF THE STATE OF FLORIDA

v.

SEABOARD AIR LINE RAILWAY AND ATLANTIC COAST LINE RAILROAD COMPANY.

1. These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Com-

mission being of the opinion that the present rates on pineapples, citrus fruits, and vegetables from points on the Florida East Coast Railway, the Seaboard Air Line Railway, and the Atlantic Coast Line Railroad to Jacksonville, Fla., when destined for points beyond in other states, are unjust and unreasonable, in so far as they exceed the rates named in paragraph 3, and that the rates named in paragraph 3 hereof would for the future be just and reasonable:

2. *It is ordered,* That defendants Florida East Coast Railway Company, Seaboard Air Line Railway, and Atlantic Coast Line Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 2d day of January, 1912, and for a period of not less than two years thereafter abstain, from exacting for the transportation of pineapples, citrus fruits, and vegetables in carloads and less than carloads from points of production upon their various lines of railway to Jacksonville, Fla., when destined for points beyond in other states, any rates in excess of those mentioned in paragraph 3 hereof.

3. *It is further ordered,* That said defendants mentioned in paragraph 2 hereof be, and they are hereby, notified and required to establish, on or before the 2d day of January, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of pineapples, citrus fruits, and vegetables, in carload and less-than-carload quantities, the carload minimum being 24,000 pounds for pineapples and citrus fruits, 21,000 pounds for vegetables under ventilation, and 17,500 pounds for vegetables under refrigeration, from points of production upon defendants' various lines of railway to Jacksonville, Fla., when destined for points beyond in other states, rates which shall not exceed the following in cents per standard box of 80 pounds in case of pineapples and citrus fruits, and in cents per standard crate of 50 pounds in case of vegetables:

Distance (miles)	Pineapples and citrus fruits		Vegetables		
			Under refrigeration	Under ventilation	
	Carload	Less than carload	Carload	Carload	Less than carload
Up to 40	9	12	7	6	8
Over 40 and up to 60	10	13	8	7	9
Over 60 and up to 80	11	14	9	8	10
Over 80 and up to 100	12	15	10	8½	10½
Over 100 and up to 120	13	16	10½	9	12
Over 120 and up to 140	14	17	11	10	13
Over 140 and up to 160	15	18	12	11	14
Over 160 and up to 180	16	19	13	11½	14½
Over 180 and up to 200	17	20	14	12	15
Over 200 and up to 220	18	21	14½	13	16
Over 220 and up to 240	19	22	15	13½	16½
Over 240 and up to 260	20	23	16	14	17
Over 260 and up to 280	21	24	17	15	18
Over 280 and up to 300	22	25	18	15½	18½
Over 300 and up to 320	23	26	18½	16	19
Over 320 and up to 340	24	27	19	17	20
Over 340 and up to 360	25	28	20	18	21
Over 360 and up to 380	26	29	21	18½	21½
Over 380 and up to 400	27	30	22	19	22
Over 400 and up to 420	28	31	22½	20	23
Over 420 and up to 440	29	32	23	20½	23½
Over 440 and up to 460	30	33	24	21	24
Over 460 and up to 480	31	34	25	22	25
Over 480 and up to 500	32	35	25½	22½	25½

4. *And it is further ordered,* That said defendants be, and they are hereby, authorized to make effective upon three days' notice to the public and to the Interstate Commerce Commission, given in the manner required by law, the rates said defendants are by this order required to establish on or before the 2d day of January, 1912, in which event the tariffs must contain the notation that they are issued under the authority hereby granted, and must refer to the numbers of these cases.

I, Judson C. Clements, Chairman of the Interstate Commerce Commission, do hereby certify that the papers hereto attached and entitled Report and Order of the Commission are true copies of the originals now on file in the office of this Commission.

In Testimony Whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 1st day of Dec. 1911.

(Seal)

JUDSON C. CLEMENTS,
Chairman.

Exhibit 2.

STATE OF FLORIDA,
COUNTY OF ST. JOHNS.

Personally appeared before me J. P. Beckwith, who, being duly sworn, says that he is Vice-President of the Florida East Coast Railway Company; that he has made an estimate of what it would cost the Florida East Coast Railway Company to purchase and own a sufficient number of refrigerator and ventilated equipment to handle and transport citrus fruits, vegetables and pineapples and other perishable products offered for shipment on the Florida East Coast Railway and, based upon the volume transported for the year ending June 30th, 1911, finds that there would be needed 4,000 ventilated cars at a cost of $1,100 each, or $4,400,000.00, and 1,000 refrigerator cars at a cost of $1,540.00, or $1,540,000.00, making a total of $5,940,000.00 that such equipment would cost; that as these cars would only be required for use a few months in each year it would be necessary to provide large number of sidetracks to place them on when the cars were not in use, which would cost not less than approximately $220,000.00 making an aggregate additional capital needed of at least $6,160,000. It would also be necessary to pay insurance on said cars amounting to approximately $16,500.00 per annum, and to employ men to guard and protect said cars from fire at an expense of approximately $45,600.00 per annum.

(Signed) J. P. BECKWITH

Sworn to and subscribed before me
this 18th day of December, 1911.
(Signed) THEO. V. POMAR,
Notary Public State at Large.
My Commission expires Oct. 9, 1915.
(Seal)

Exhibit 3.

STATE OF FLORIDA.
COUNTY OF DUVAL.

Personally appeared before me Joseph R. Parrott, who, being duly sworn, says that he is the President of petitioner, the Florida East Coast Railway Company; that the capital stock of said company consists of $5,000,000.00 of common stock (there is no preferred stock) on which no dividends whatsoever are paid; that all of said stock was purchased and paid for at par; that this affiant has been connected with the Florida East Coast Railway Company for many years and is thoroughly familiar with its business; that on the 30th of June, 1911, its funded debt outstanding consisted of $10,000,000.00 of first mortgage bonds and $20,000,000.00 of general mortgage bonds; that the interest on the first mortgage bonds is fixed at 4½ per cent and the interest on the general mortgage income bonds limited to not exceeding 5 per cent; that the books of the company show that the line of road between Jacksonville and Miami and branches cost between $18,000,000.00 and $20,000,000.00; that this affiant believes and charges that the present value of this portion of the road largely exceeds $20,000,000.00 and on a fair valuation will probably approximate $25,000,000.00.

Affiant further says that, although the general mortgage bonds provide for a maximum of 5 per cent interest, during the year 1911 only 4 per cent interest was paid on said bonds, or an aggregate of only $1,250,000.00 of profit, or less than 6 per cent on the fair present value of the property between Jacksonville and Miami and branches.

Affiant further says that the extension of the Florida East Coast Railway Company from Miami to Knights Key and from thence nearly completed to Key West forms an important and valuable extension of the main line of the Florida East Coast Railway; that nearly all of the business done on said extension either originates

in Jacksonville, passing over the line to Miami, or goes from the extension to Jacksonville passing over the entire main line; that the earnings of the line between Jacksonville and Miami from passengers and freight to and from the extension South of Miami has already been very large and increases every year; that the mortgage bonds of the company cover the entire line of road and are not limited to any particular section, branch or extension.

Affiant further says that the present value of the entire line of road at a fair valuation from Jacksonville to Knights Key with its branches, this affiant believes is not less than between $35,000,000.00 and $40,000,000.00, and that it could not be replaced in its present condition, with its equipment, for a smaller sum, and that the road when completed to Key West will represent a valuation largely in excess of the cost of construction and equipment.

Affiant further says that as President of the Florida East Coast Railway Company he has exercised a vigilant supervision over its operations; that the most rigid economy has been exercised in the management and operation of the road; and that the present rates of freight on vegetables and citrus fruits are as low as the Florida East Coast Railway Company can afford to transport them, and that any further reduction of rates will tend to prevent the said road from earning even the small interest now paid on its bonds and will prevent the earning of any dividends whatsoever in the future on its capital stock.

(Signed) J. R. Parrott.

Sworn to and subscribed before me this 18th day of December, 1911.
(Signed) C. F. White,
Notary Public State at Large.
My Commission expires February 7, 1915.
(Seal)

Exhibit 4.

STATE OF FLORIDA,
COUNTY OF ST. JOHNS.

Personally appeared before me W. H. Chambers, who, being duly sworn, says that he is Comptroller of the Florida East Coast Railway Company; that the books of the company show that the $10,000,000.00 outstanding first mortgage bonds bearing 4½ per cent were purchased and paid for at 98 cents on the dollar; that the books of the Florida East Coast Railway Company show that the $20,000,000.00 outstanding general income bonds were bought and paid for at par.

(Signed) W. H. CHAMBERS.

Sworn to and subscribed before me this 18th day of December, 1911.
(Signed) THEO. V. POMAR,
Notary Public State at Large.
My Commission expires Oct. 9, 1915.
(Seal)

Exhibit 5.

STATE OF FLORIDA,
COUNTY OF ST. JOHNS.

Personally appeared before me W. H. Chambers, who, being duly sworn, says that he is the Comptroller of the Florida East Coast Railway Company; that the general balance sheet of the Florida East Coast Railway Company shows that the cost of the road to Knights Key was, up to the 30th day of June, 1911, $29,232,262.23 and the cost of equipment $2,696,479.69, making a total of $31,928,741.92.

Affiant further says that the net earnings of the road during the fiscal year ending June 30th, 1911, after deducting taxes, hire of equipment and rentals, were

$1,295,622.14, out of which the Florida East Coast Railway Company paid to holders of the $10,000,000.00 of first mortgage bonds 4½ per cent interest, or $450,000.00, and to the holders of the general mortgage income bonds aggregating $20,000,000.00, 4 per cent interest, or $800,000.00, leaving an aggregate balance to profit and loss of $67,129.83 after adding $21,507.69 earned on deposits; that no dividends whatsoever have been paid on the capital stock of the company.

(Signed) W. H. CHAMBERS.

Sworn to and subscribed before me
this 18th day of December, 1911.
(Signed) THEO. V. POMAR,
Notary Public State at Large.
My Commission expires Oct. 9, 1915.
(Seal)

Exhibit 6.

STATE OF FLORIDA,
COUNTY OF ST. JOHNS.

Personally appeared before me W. H. Chambers, who, being duly sworn, says that he is Comptroller of the Florida East Coast Railway Company; that during the fiscal year ending June 30th, 1909, there was shipped on the line of the Florida East Coast Railway 1,110,548 crates of pineapples, producing a revenue of $270,889.82; that during the fiscal year ending June 30th, 1910, owing to freeze, the number of crates of pineapples was reduced to 733,350 crates, which, owing to the smallness of the crop and reduction of rates ordered by the Interstate Commerce Commission, produced a revenue of only $146,354.69; that during the fiscal year ending June 30th, 1911, the pineapple crop still further decreased, there being shipped only 563,315 crates, producing a revenue of only $119,390.70.

Affiant further says that the citrus crop on the line of the Florida East Coast Railway at this time is smaller than it was during the fiscal year ending June 30th, 1911, but to what extent cannot yet be learned.

(Signed) W. H. CHAMBERS.

Sworn to and subscribed before me this 18th day of December, 1911.
(Signed) THEO. V. POMAR,
Notary Public State at Large.
My Commission expires Oct. 9, 1915.
(Seal)

Exhibit 7.

STATE OF FLORIDA,
COUNTY OF ST. JOHNS.

Personally appeared before me E. Ben Carter, who, being duly sworn, says that he is Chief Engineer of the Florida East Coast Railway Company; that in order to accommodate the growers of citrus fruits, pineapples and vegetables the Florida East Coast Railway Company has constructed large numbers of spurs and sidings approximating ninety-five in number and aggregating twelve miles; that these spurs run into the groves and farms or beside the packing houses contiguous to said groves and farms, thereby saving the growers the expense of hauling their fertilizer and materials from the regular stations of the company to their farms and groves and from hauling their fruit and vegetables to the regular stations of the company; that the cars bringing fertilizer and other materials to the growers are placed on these spurs and sidings by the Florida East Coast Railway Company and the empty cars in which to load the fruits and vegetables are placed by the company on these sidings in the groves and farms or in front of the packing houses, which affiant estimates saves to the growers not less than

three cents per crate on every crate of fruit and vegetables shipped by the growers.

Affiant further says that the cost of keeping up and maintaining these spurs and sidings for the use and benefit of the growers of fruit and vegetables is paid by the Florida East Coast Railway Company.

(Signed) E. BEN CARTER.

Sworn to and subscribed before me this 18th day of December, 1911.
(Signed) THEO. V. POMAR,
Notary Public State at Large.
My Commission expires Oct. 9, 1915.
(Seal)

Exhibit 8.

STATE OF FLORIDA,
COUNTY OF ST. JOHNS.

Personally appeared before me W. H. Chambers, who, being duly sworn, says that he is Comptroller of the Florida East Coast Railway Company and, as such, has the custody of the books of the Florida East Coast Railway Company; that during the fiscal year ending June 30, 1910, the aggregate earnings of the entire line of the Florida East Coast Railway from freight and passengers going to, from and on the extension, including gross earnings from freight from Knights Key to Jacksonville and other points on the line of the Florida East Coast Railway aggregated $184,544.90; that the passenger business to and from the extension, including Knights Key, to Jacksonville and other points on petitioner's road aggregated $137,179.26; that the freight over the line of petitioner's road to and from the extension, on account of construction work, aggregated $74.275.57; that the earnings from passengers for work on the extension aggregated $7,060.55, making an aggregate of

$403,060.28 of business brought by the extension, including Knights Key, to the entire road; that, deducting the proportion applicable to the extension on a mileage basis, $60,320.83, leaves a net gain to the main line between Miami and Jacksonville, as a direct result of the business of the extension of $342,739.45.

Affiant further says that this business was and is exclusive of earnings from mail and express matter.

Affiant further says that for the fiscal year ending June 30, 1911, the earnings of the entire line of the Florida East Coast Railway from freight and passengers going to, and from and on the extension, including gross earnings from freight from Knights Key to Jacksonville and other points on the line of the Florida East Coast Railway aggregated $214,678.23; that the passenger business to and from the extension, including Knights Key, to Jacksonville and other points on petitioner's road aggregated $231,870.26; that the freight over the line of petitioner's road to and from the extension, on account of construction work, aggregated $98,514.27; that the earnings from passengers for work on the extension aggregated $8,993.07, making an aggregate of $554,055.83 of business brought by the extension, including Knights Key, to the entire road; that, deducting the proportion applicable to the extension on a mileage basis, $85,781.96, leaves a net gain to the main line between Miami and Jacksonville, as a direct result of the business of the extension of $468,273.87.

Affiant further says that this business was and is exclusive of earnings from mail and express matter.

(Signed) W. H. CHAMBERS.

Sworn to and subscribed before me
this 18th day of December, 1911.
(Signed) THEO. V. POMAR,
Notary Public State at Large.
My Commission expires Oct. 9, 1915
(Seal)

Exhibit 9.

STATE OF FLORIDA,
COUNTY OF ST. JOHNS.

Personally appeared before me W. H. Chambers, who being duly sworn, says that he is Comptroller of the Florida East Coast Railway Company and, as such, has charge of the books of said Company; that from June 30, 1910, to October 31, 1911, there had been expended in betterments and improvements on the main line of the Florida East Coast Railway from Jacksonville to Miami and branches the following sums:

For the fiscal year ending June 30, 1910.....$349,532.54
For the fiscal year ending June 30, 1911..... 484,540.25
To October 31st, 1911..... 533,714.94
a total of $1,367,787.73.

Affiant further says that there was paid by the Florida East Coast Railway Company for hire of refrigerator and ventilated cars for the fiscal year ending June 30, 1910, $40,367.78 and for the fiscal year ending June 30, 1911, $52,660.33.

(Signed) W. H. CHAMBERS.

Sworn to and subscribed before me this 18th day of December, 1911.
(Signed) THEO. V. POMAR,
Notary Public State at Large.
My Commission expires Oct. 9, 1915.
(Seal)

Exhibit 10.

AVERAGE TONNAGE OF PRINCIPAL FLORIDA RAILROADS.

The following is a tabulated statement of the tonnage of freight on the Florida East Coast Railway, the Atlantic Coast Line Railroad, and the Seaboard Air Line Railway for the fiscal years therein set forth.

FLORIDA EAST COAST RAILWAY.

Commodity	*1910*	*1911*
	Whole Tons	*Whole Tons*
Oranges, lemons and limes	26,406	29,917
Other Fruit	71	82
Pineapples	29,334	22,532
Vegetables	75,742	72,361
Coal	25,684	44,897
Wood	32,067	46,913
Meats	6,071	7,312
Hay and Grain	17,119	19,660
Flour and other Mill Products	16,762	17,558
Iron Machinery and Metal	4,714	6,148
Household Goods	5,372	7,665
Lime, Cement and Brick	38,628	33,353
Live Stock	2,389	2,884
Lumber	65,638	86,819
Other Products of Forest	13,209	18,486
Turpentine and Rosin	16,159	17,152
Agricultural Implements, Wagons, etc.	1,371	1,624
Other Manufactures	95,162	109,911
Merchandise	13,988	17,933
Miscellaneous	93,971	224,461

ATLANTIC COAST LINE RAILWAY.

Commodity	*1910*	*1911*
	Whole Tons	*Whole Tons*
Cotton	8,558	4,634
Fruit and Vegetables	297,744	249,111
Lumber	558,267	532,261
Naval Stores	118,072	121,225
Other Products of Forest	468,890	407,243
Phosphate and other Products of Mines	1,583,467	1,621,261

Earnings	*1910*	*1911*
Freight	$ 4,739,496.15	$ 4,773,325.06
Passengers	1,860,882.88	2,172,049.95
Mail Revenue	157,832.44	157,579.26
Express	317,633.60	326,777.00
Other Passenger Train Revenue	471.32	2,194.33
Excess Baggage	19,265.48	24,062.43
Total—State operating revenue	$ 7,238,976.25	$ 7,600,710.29
Total—Entire Line Operating revenue	29,810,267.78	31,622,449.24

SEABOARD AIR LINE RAILROAD.

Commodity	*1910* Whole Tons	*1911* Whole Tons
Cotton	6,975	7,020
Fruit and Vegetables	205,891	216,120
Phosphate and other Products of Mines	430,612	955,903
Lumber	649,969	582,972
Other Forest Products	238,076	240,442
Naval Stores	128,917	130,005

Earnings	*1910*	*1911*
Freight	$ 2,252,180.04	$ 3,227,651.05
Passenger	1,229,691.53	1,455,543.11
Excess Baggage	13,397.39	15,187.50
Mail	78,928.42	76,907.34
Express	151,666.09	162,033.78
Parlor and Chair Car	7,248.40	7,231.70
Other Passenger Train Revenue	356.12	2,883.94
Total Revenue—State	$ 4,513,651.06	$ 5,438,601.07
Total Revenue—Entire Line	$19,662,527.27	$21,782,004.61

Exhibit 11.

Earnings year ending June 30th, 1910 Jacksonville to Homestead	$3,162,465.00
Earnings year ending June 30th, 1910, Homestead to Knights Key	524,969.30
Earnings year ending June 30th, 1911, Jacksonville to Homestead	3,586,000.00
Earnings year ending June 30th, 1911, Homestead to Knights Key	595,277.80
Earnings for 4 months ending Oct. 31st, 1911, Jacksonville to Homestead	794,595.00
Earnings for 4 months ending Oct. 31st, Homestead to Knights Key	131,902.04
Investment to Oct. 31st, 1911	$32,050,775.12
Amount of charges to Key West Extension to October 31st, 1911 not closed into Investment	4,430,990.18
Total to October 31st, 1911	$36,481,765.30

Exhibit 12.

Fixed charges on Bonds years ending June 30th, 1910-11 and for four months ending October 31st, 1911.

	1910	1911
1st Mortgage	$450,000.00	$450,000.00
2nd Mortgage, (Income)	700,000.00	800,000.00

Four months to October 31st, 1911

1st Mortgage	$150,000.00
2nd Mortgage, (Income)	none
Floating Indebtedness October 31st, 1911	$4,080,142.06
Interest to October 31st, 1911	41,672.48
Stock outstanding November 30th, 1911	$5,000,000.00

No dividends have ever been paid on stock.

Statement of amount paid for refrigerator and ventilated cars during years ending June 30th, 1910-11.

1910	$40,367.78
1911	52,660.33

Betterments on main-line Jacksonville to Miami years ending June 30th, 1910, 1911 and from July 1st to October 31st, 1911.

1910	$349,532.54
1911	484,540.25
To Oct. 31st, 1911	533,714.94

Exhibit 13.

Statement of Earnings and Expenses showing Interest Taxes and Betterments for years ending June 30th, 1910 and 1911 and from July 1st to October 31st, 1911.

	1910	
Earnings		$3,687,434.30
Operating Expenses		2,205,812.87
Income		$1,481,621.43
Interest and Taxes	$1,314,775.41	
Other charges	52,921.48	1,367,696.89
Net Earnings		$ 113,924.54
	1911	
Earnings		$4,181,277.80
Operating Expenses		2,603,710.19
Income		$1,577,567.61
Interest and Taxes	$1,423,641.13	
Other charges	86,796.65	1,510,437.78
Net Earnings		$ 67,129.83
	To October 31st, 1911.	
Earnings		$ 926,497.04

Operating Expenses .		845,741.95
Income		$ 80,755.09
Interest and Taxes . .	$ 212,000.00	
Other Charges	31,292.02	243,292.03
Deficit		$ 162,536 94

Exhibit 14.

Vegetables in Crates

FROM	Distance	Present Rates C.L.	Present Rates L.C.L.	Crates	Revenue	New Rates C.L.	New Rates L.C.L.	Revenue
South Jax. Proper .	2	2	2	14	2.03	6	8	2.03
Hogan	6	6	9	8	.32	6	8	.32
Pablo Beach . . .	18	6	9	3	.27	6	8	.27
East Mayport . . .	25	7	10	10	1.21	6	8	1.21
Sunbeam	10	6	9	16	1.60	6	8	1.60
Greenland	13	6	9	7	.84	6	8	.84
Bayard	15	6	9	488	70.75	6	8	4.88
Durbin	20	6	9	765	62.62	6	8	62.62
St. Augustine . . .	36	7	10	7413	380.14	6	8	306.01
Hurds	44	8	11	5	.80	7	9	.80
Elkton	47	8	11	55182	4,448.10	7	9	3,897.28
Armstrong	49	8	11	7064	592.04	7	9	521.40
Spuds	51	8	11	9042	738.09	7	9	647.67
Hastings	54	8	11	306664	26,760.34	7	9	23,693.70
Orange Mills . . .	57	8	11	1600	162.12	7	9	146.12
East Palatka . . .	62	8	8	46880	3,812.37	8	10	3,812.37
San Mateo	66	9	12	1555	105.05	8	10	73.95
Yelvington	67	9	12	5998	560.56	8	10	450.60
Roy	69	9	12	4816	443.73	8	10	347.41
Dinner Island . . .	76	9	12	2	.25	8	10	.25
Neoga	80	9	12	56	5.04	8	10	5.04
Espanola	82	10	13	961	110.43	8½	10½	86.40
Bunnell	87	10	13	2554	282.48	8½	10½	218.63
Dupont	90	10	13	4380	450.19	8½	10½	340.69
Ormond	104	11	14	200	22.76	9	12	18.76
Daytona	110	11	14	746	92.25	9	12	77.33
Blake	113	11	14	144	13.34	9	12	10.46
Port Orange	115	11	14	368	42.47	9	12	35.11
New Smyrna . . .	125	12	15	1802	242.23	10	13	206.19
Indian Springs . .	134	12	15	14	.72	10	13	.44
Rogers	140	12	15	24	2.05	10	13	1.57
Lake Helen	145	13	16	9	1.75	11	14	1.57
Orange City	152	13	16	26	4.66	11	14	4.14
Ariel	133	12	15	281	33.51	10	13	27.89
Oak Hill	136	12	15	446	52.99	10	13	44.07
Lyrata	143	13	16	19	1.60	11	14	1.22
Titusville	154	13	16	365	48.08	11	14	40.78
LaGrange	157	13	16	132	20.99	11	14	18.35
Mims	159	13	16	95	12.74	11	14	10.84

FROM	Distance	Present Rates C.L.	Present Rates L.C.L.	Crates	Revenue	New Rates C.L.	New Rates L.C.L.	Revenue
Turnbull	162	13	16	40	5.23	11½	14½	4.63
Cow Creek	176	13	16	116	11.86	11½	14½	10.12
Celery City	179	13	16	321	31.78	11½	14½	26.97
Kalamazoo	181	13	16	18	1.60	12	15	1.48
Osteen	184	13	16	142	15.36	12	15	13.94
Garfield	188	13	16	137	19.74	12	15	18.37
Enterprise	191	13	16	85	12.57	12	15	11.72
Frontenac	165	14	17	137	16.15	11½	14½	12.73
Sharpes	168	14	17	42	4.90	11½	14½	3.85
City Point	169	14	17	402	46.40	11½	14½	36.35
Cocoa	173	14	17	332	38.16	11½	14½	29.86
Bonaventure	179	14	17	124	19.45	11½	14½	16.35
Eau Gallie	190	15	18	233	43.22	12	15	36.23
Melbourne	194	15	18	3	.25	12	15	.25
Malabar	200	15	18	50	4.87	12	15	3.37
Grant	206	16	19	14	2.30	13	16	1.98
Roseland	212	16	19	580	110.34	13	16	92.94
Sebastian	215	16	19	2390	453.48	13	16	371.78
Wabasso	219	16	19	1783	333.93	13	16	280.44
Quay	222	17	20	514	102.80	13½	16½	84.81
Gifford	225	17	20	146	29.14	13½	16½	24.03
Vero	228	17	20	39	8.05	13½	16½	6.68
Oslo	231	17	20	34	2.37	13½	16½	1.16
Viking	234	17	20	6	.36	13½	16½	.25
A-236	236	17	20	22	2.64	13½	16½	1.87
A-237	237	17	20	4	.80	13½	16½	.66
St. Lucie	238	17	20	6	1.01	13½	16½	.80
Ft. Pierce	242	18	21	2885	369.01	14	17	243.61
Carson	246	18	21	148	10.30	14	17	4.48
A-247	247	18	21	420	75.60	14	17	58.80
A-248	248	18	21	4	1.06	14	17	.94
Walton	252	18	21	2	.42	14	17	.34
A-256	256	18	21	655	93.87	14	17	67.67
Jensen	257	18	21	56	7.25	14	17	5.01
Stuart	262	19	22	435	61.45	15	18	44.05
A-262	262	19	22	21	4.62	15	18	3.78
Fruita	269	19	22	87	13.19	15	18	9.71
Gomez	272	19	22	315	63.98	15	18	49.38
Hobe Sound	275	19	22	16	3.68	15	18	3.04
Likely	278	19	22	457	87.03	15	18	68.75
A-279	279	19	22	5	.85	15	18	.65
Jupiter	283	20	23	32	7.14	15½	18½	5.70
Prairie	290	20	23	473	101.34	15½	18½	80.06
Riviera	295	20	23	19	2.76	15½	18½	1.91
West Palm Beach	299	20	23	2549	542.76	15½	18½	528.05
Lantana	308	21	24	175	33.82	16	19	25.07
Hypoluxo	309	21	24	16776	3,775.46	16	19	2,836.66
Boynton	312	21	24	40651	8,666.93	16	19	6,633.38
A-314	314	21	24	132	31.14	16	19	24.58
Delray	317	21	24	93602	19,980.75	16	19	15,300.65
Yamato	321	21	24	8172	1,841.99	17	20	1,515.11
Boca Ratone	325	21	24	27442	4,484.40	17	20	3,386.72
Deerfield	327	21	24	67511	14,729.26	17	20	12,028.82
A-330	330	21	24	9904	2,086.71	17	20	1,690.55
Pompano	333	22	25	151402	34,589.49	17	20	27,019.39
Colohatchee	338	22	25	73158	16,283.92	17	20	12,626.02
Ft. Lauderdale	341	22	25	91363	19,746.42	18	21	15,091.90

FROM	Distance	Present Rates C.L.	Present Rates L.C.L.	Crates	Revenue	New Rates C.L.	New Rates L.C.L.	Revenue
Dania	345	22	25	231783	50,645.87	18	21	41,374.55
A-347	347	22	25	20769	5,571.78	18	21	4,741.02
Hallandale	351	22	25	154317	34,195.78	18	21	28,023.10
Ojus	354	22	25	69868	15,438.00	18	21	12,643.28
Fulford	355	22	25	82934	18,188.66	18	21	14,871.30
Arch Creek	357	22	25	128476	29,794.15	18	21	23,655.11
Biscayne	359	22	25	2040	515.10	18	21	433.50
Little River	361	23	26	134560	30,895.59	18½	21½	24,740.39
Lemon City	362	23	26	26052	5,982.08	18½	21½	4,819.74
Buena Vista	363	23	26	1062	313.29	18½	21½	265.50
Miami	366	23	26	98303	23,333.67	18½	21½	19,110.04
Cocoanut Grove	371	23	26	5502	1,274.79	18½	21½	1,027.20
Larkin	374	23	26	17014	3,884.23	18½	21½	3,118.60
Kendal	377	23	26	4559	1,014.49	18½	21½	809.34
A-377	377	23	26	1825	429.67	18½	21½	347.55
Benson	378	23	26	959	249.34	18½	21½	206.19
Rockdale	380	23	26	8938	2,085.61	18½	21½	1,683.40
Perrine	382	23	26	74196	17,626.34	19	22	4,658.50
Peters	383	23	26	544	141.22	19	22	119.46
Goulds	386	23	26	115551	25,700.28	19	22	21,078.24
Black Point	387	23	26	474	103.87	19	22	84.91
Princeton	388	23	26	7282	1,745.22	19	22	1,453.94
Naranja	389	23	26	51072	12,033.55	19	22	9,990.67
Modella	391	24	27	3935	1,001.51	19	22	814.76
Homestead	394	24	27	53573	12,799.03	19	22	10,120.38
Detroit	395	24	27	16175	3,797.41	19	22	2,988.66
				2368504	467,359.40			368,748.54

Reduction in revenue $98,610.86, or 21 2-10 per cent.

Exhibit 15.

Citrus Fruits in Crates

FROM	Distance	Present Rates C.L.	Present Rates L.C.L.	Crates	Revenue	New Rates C.L.	New Rates L.C.L.	Revenue
Sunbeam	10	8	11	2	.29	9	12	.31
Greenland	13	8	11	1	.33	9	12	.34
Durbin	20	8	11	9	1.80	9	12	1.89
St. Augustine	36	9	12	49	9.66	9	12	9.66
Hurds	44	10	13	5	1.20	10	13	1.20
Spuds	51	11	14	9	1.98	10	13	1.89
Hastings	54	11	14	12888	1,586.56	10	13	1,467.68
East Palatka	62	10	10	2663	269.41	11	14	269.41
Palatka	64	10	10	215	27.42	11	14	27.42
San Mateo	66	10	10	9566	1,146.60	11	14	1,146.60
Espanola	82	14	17	39	10.59	12	15	9.81
Dupont	90	14	17	126	21.50	12	15	18.98
Harwood	97	15	18	392	70.56	12	15	58.80
Ormond	104	16	19	12467	2,016.17	13	16	1,642.16
Holly Hill	107	16	19	5690	955.10	13	16	784.40
Daytona	110	16	19	2881	500.29	13	16	413.86
Blake	113	17	20	9430	1,688.27	13	16	1,312.07

FROM	Distance	Present Rates C.L.	Present Rates L.C.L.	Crates	Revenue	New Rates C.L.	New Rates L.C.L.	Revenue
Pt. Orange	115	17	20	5379	1,027.43	13	16	812.27
Spruce Creek	119	17	20	184	36.80	13	16	29.44
Turnbull Bay	121	18	21	255	53.55	14	17	43.35
New Smyrna	125	18	21	12292	2,481.09	14	17	1,989.41
Glencoe	128	18	21	6058	1,271.17	14	17	928.85
Indian Springs	134	19	22	101	22.22	14	17	17.17
Lake Helen	145	18	21	19298	3,491.28	15	18	2,912.34
Orange City	150	15	15	12747	2,107.64	15	18	2,107.64
Hawks Park	127	18	21	9238	1,938.72	14	17	1,569.22
A-130	130	18	21	205	45.10	14	17	36.90
Hucomer	131	19	22	8	1.50	14	17	1.10
Oak Hill	136	19	22	23325	4,700.67	14	17	3,534.42
A-138	138	19	22	34975	5,916.81	14	17	4,168.06
Wiley Avenue	150	20	23	20671	4,190.89	15	18	3,157.34
Lyrata	143	20	23	1717	344.63	15	18	258.78
Titusville	154	20	23	10591	2,338.36	15	18	1,808.81
LaGrange	157	20	23	35812	7,226.59	15	18	5.435.99
Mims	159	20	23	16602	3,495.60	15	18	2,665.50
Turnbull	162	21	24	746	171.58	16	19	134.28
Celery City	177	21	24	1110	239.19	16	19	184.69
Osteen	184	15	18	563	87.25	17	20	87.25
Garfield	188	15	18	553	108.25	17	20	108.25
Pritchards	158	20	23	1954	431.13	15	18	333.43
Frontenac	165	21	24	15	3.60	16	19	2.85
A-166	166	21	24	649	134.40	16	19	102.15
Sharpes	168	21	24	1682	391.02	16	19	306.92
City Point	169	21	24	5357	1,218.85	16	19	951.00
Spratts Siding	170	21	24	8	1.92	16	19	1.51
A-170	170	21	24	73	17.52	16	19	13.87
A-171	171	21	24	138	33.12	16	19	26.22
Cocoa	173	21	24	131075	28,737.09	16	19	22,173.34
Rockledge	175	21	24	63	15.12	16	19	11.97
Bonaventure	179	21	24	5708	1,186.15	16	19	900.75
Eau Gallie	190	22	25	12734	3,197.93	17	20	2,561.23
Melbourne	194	22	25	229	55.26	17	20	43.81
A-195	195	22	25	3	.69	17	20	.54
Tillman	197	22	25	102	25.50	17	20	20.40
Malabar	200	22	25	1288	321.16	17	20	256.76
Valkaria	203	23	26	39	10.38	17	20	8.43
Grant	206	23	26	258	64.86	18	21	51.96
Micco	209	23	26	12425	1,384.50	18	21	763.25
Roseland	212	23	26	1941	512.55	18	21	415.50
Sebastian	215	23	26	8816	2,067.89	18	21	1,627.09
Wabasso	219	23	26	5575	1,397.66	18	21	1,118.91
Quay	222	24	27	2254	600.34	19	22	487.64
A-223	223	24	27	120	32.40	19	22	26.40
Gifford	225	24	27	163	43.97	19	22	35.82
Vero	228	24	27	6236	1,661.54	19	22	1,349.74
Oslo	231	24	27	3643	983.27	19	22	801.12
A-234	234	24	27	21	5.67	19	22	4.62
Viking	234	24	27	3958	1,056.82	19	22	858.92
A-236	236	24	27	1415	367.95	19	22	297.20
A-237	237	24	27	3244	873.88	19	22	711.68
St. Lucie	238	24	27	47	12.69	19	22	10.34
Ft. Pierce	242	25	28	22687	5,860.13	20	23	4,725.78
Carson	246	25	28	8704	2,377.93	20	23	1,942.73
A-247	247	25	28	7	1.96	20	23	1.61
Eldred	247	25	28	1017	285.04	20	23	234.19

FROM	Distance	Present Rates C.L.	Present Rates L.C.L.	Crates	Revenue	New Rates C.L.	New Rates L.C.L.	Revenue
Ankona	249	25	28	636	173.61	20	23	141.81
A-250	250	25	28	1	.28	20	23	.23
A-251	251	25	28	15	4.20	20	23	3.45
Walton	252	25	28	22	2.86	20	23	1.76
Eden	254	25	28	1192	324.26	20	23	264.66
A-254	254	25	28	58	16.24	20	23	13.34
Jensen	257	25	28	2768	763.64	20	23	625.24
A-257	257	25	28	2673	693.46	20	23	559.81
Stuart	262	26	29	2982	727.12	21	24	578.02
A-262	262	26	29	102	30.41	21	24	25.31
Gomez	272	26	29	2809	813.51	21	24	673.06
Hobe Sound	275	26	29	718	211.55	21	24	175.65
Jupiter	283	27	30	6177	1,463.45	22	25	1,154.61
Prairie	290	27	30	1323	357.68	22	25	291.53
Riveria	295	27	30	145	43.50	22	25	36.25
West Palm Beach	299	27	30	525	155.04	22	25	128.79
A-300	300	27	30	25	7.83	22	25	6.58
Lantana	308	28	31	182	46.41	23	26	37.31
Hypoluxo	309	28	31	1498	398.83	23	26	323.93
Boynton	312	28	31	320	98.14	23	26	82.14
Delray	317	28	31	5898	1,551.96	23	26	1,257.06
Yamato	318	28	31	1	.30	23	26	.25
Boca Ratone	325	28	31	851	246.87	24	27	212.83
Deerfield	327	28	31	4	.82	24	27	.66
Colohatchee	338	29	32	78	24.96	24	27	21.06
Ft. Lauderdale	341	29	32	775	238.64	25	28	207.64
Dania	345	29	32	11770	2,715.79	25	28	2,244.99
Hallandale	351	29	32	3466	987.48	25	28	749.84
Ojus	354	29	32	26	8.34	25	28	7.30
Fulford	355	29	32	5657	1,923.49	25	28	1,697.21
Arch Creek	357	29	32	3319	990.25	25	28	857.49
Biscayne	359	29	32	419	134.17	25	28	117.41
Little River	361	30	33	7460	2,526.46	26	29	2,228.06
Lemon City	362	30	33	10929	3,239.32	26	29	2,802.16
Buena Vista	363	30	33	2794	857.48	26	29	745.72
Miami	366	30	33	90515	27,600.29	26	29	23,979.69
Cocoanut Grove	371	30	33	42217	11,464.28	26	29	9,775.60
Larkin	374	30	33	434	129.22	26	29	111.86
Kendal	377	30	33	2247	678.06	26	29	588.18
Perrine	382	30	33	2993	897.91	27	30	828.12
Goulds	386	30	33	1101	352.94	27	30	319.91
Black Point	387	30	33	1307	398.92	27	30	359.71
Princeton	388	30	33	6	2.08	27	30	1.90
Naranja	389	30	33	5814	1,356.68	27	30	1,182.26
Modello	391	31	34	137	43.76	27	30	38.28
Homestead	394	31	34	7151	1,937.12	27	30	1,651.08
Jewfish	415	31	34	77	18.26	28	31	15.95
Rock Harbor	424	32	35	5	2.25	29	32	2.10
Quarry	438	32	35	11	2.76	29	32	2.43
Central Supply	444	32	35	45	9.13	30	33	8.23
				744188	171,647.95			139,475.68

Reduction in revenue $32,172.27, or 18 8-10 per cent.

Exhibit 16.

Statement showing decreased revenue from pineapple traffic on account of reduced rates effective April 15th, 1910, and decreased movement for periods ending June 30th, as shown below:

Year	Crates	Revenue
1909	1,110,548	$270,889.82
1910	733,350	146,354.69
1911	563,315	119,390.70

Exhibit 17.

Citrus Fruits, any quantity, per crate of 80 lbs.
In effect 1908.

10 miles and under	10
20 miles and over 10	10
30 miles and over 20	10
40 miles and over 30	10
50 miles and over 40	10
60 miles and over 50	10
70 miles and over 60	10
80 miles and over 70	15
90 miles and over 80	15
100 miles and over 90	17
110 miles and over 100	17
120 miles and over 110	18
130 miles and over 120	18
140 miles and over 130	20
150 miles and over 140	20
160 miles and over 150	20
170 miles and over 160	24
180 miles and over 170	24
190 miles and over 180	24
200 miles and over 190	24
210 miles and over 200	24
220 miles and over 210	24
230 miles and over 220	25

240 miles and over 230	25
250 miles and over 240	25
260 miles and over 250	25
270 miles and over 260	25
280 miles and over 270	25
290 miles and over 280	30
300 miles and over 290	30
310 miles and over 300	30
320 miles and over 310	30
330 miles and over 320	30
340 miles and over 330	30
350 miles and over 340	32
360 miles and over 350	33
370 miles and over 360	33
380 miles and over 370	37
390 miles and over 380	39
400 miles and over 390	43
410 miles and over 400	43
420 miles and over 410	43
430 miles and over 420	43
440 miles and over 430	43
450 miles and over 440	43
460 miles and over 450	44
470 miles and over 460	44
480 miles and over 470	44

Exhibit 18.

Statement showing approximately what it would cost to buy and own sufficient refrigerator and ventilated equipment to handle the perishable traffic offered for shipment from the Florida East Coast Ry., based upon movement for the year ending June 30th, 1911.

4,000 ventilators, $1,100.00 each	$4,400,000.00
1,000 refrigerators, 1,540.00 each	1,540.000.00
Total	$5,940,000.00

Exhibit 19.

Present and Proposed Rates

	PINEAPPLES						ORANGES						VEGETABLES					
	Present		Proposed		Reduction		Present		Proposed		Reduction		Present		Proposed		Reduction	
	C.L.	L.C.L.	C.L.	L.C.L.	C.L.	L.C.L.	C.L.	L.C.L.	C.L.	L.C.L.	C.L.	L.C.L.	C.L.	L.C.L.	C.L.	L.C.L.	C.L.	L.C.L.
Hastings	10	13	10	13	..	..	11	14	10	13	1	1	8	11	7	9	1	2
Daytona	13	16	13	16	..	..	16	19	13	16	3	3	11	14	9	12	2	2
Pt. Orange	13	16	13	16	..	..	17	20	13	16	4	4	11	14	9	12	2	2
New Smyrna	14	17	14	17	..	..	18	21	14	17	4	4	12	15	10	13	2	2
Oak Hill	14	17	14	17	..	..	19	22	14	17	5	5	12	15	10	13	2	2
Titusville	15	18	15	18	..	..	20	23	15	18	5	5	13	16	11	14	2	2
City Point	16	19	16	19	..	..	21	24	16	19	5	5	14	17	11½	14½	2½	2½
Cocoa	16	19	16	19	..	..	21	24	16	19	5	5	14	17	11½	14½	2½	2½
Bonaventure	16	19	16	19	..	..	21	24	16	19	5	5	14	17	11½	14½	2½	2½
Eau Gallie	17	20	17	20	..	..	22	25	17	20	5	5	15	18	12	15	3	3
Melbourne	17	20	17	20	..	..	22	25	17	20	5	5	15	18	12	15	3	3
Sebastian	18	21	18	21	..	..	23	26	18	21	5	5	16	19	13	16	3	3
Viking	19	22	19	22	..	..	24	27	19	22	5	5	17	20	13½	16½	3½	3½
St. Lucie	19	22	19	22	..	..	24	27	19	22	5	5	17	20	13½	16½	3½	3½
Ft. Pierce	20	23	20	23	..	..	25	28	20	23	5	5	18	21	14	17	4	4
White City	20	23	20	23	..	..	25	28	20	23	5	5	18	21	14	17	4	4
Eldred	20	23	20	23	..	..	25	28	20	23	5	5	18	21	14	17	4	4
Ankona	20	23	20	23	..	..	25	28	20	23	5	5	18	21	14	17	4	4
Walton	20	23	20	23	..	..	25	28	20	23	5	5	18	21	14	17	4	4
Eden	20	23	20	23	..	..	25	28	20	23	5	5	18	21	14	17	4	4
Jensen	20	23	20	23	..	..	25	28	20	23	5	5	18	21	14	17	4	4
Stuart	21	24	21	24	..	..	26	29	21	24	5	5	19	22	15	18	4	4
Jupiter	22	25	22	25	..	..	27	30	22	25	5	5	20	23	15½	18½	4½	4½
W. Palm Beach	22	25	22	25	..	..	27	30	22	25	5	5	20	23	15½	18½	4½	4½
Lantana	23	26	23	26	..	..	28	31	23	26	5	5	21	24	16	19	5	5
Boynton	23	26	23	26	..	..	28	31	23	26	5	5	21	24	16	19	5	5
Boca Ratone	24	27	24	27	..	..	28	31	24	27	4	4	21	24	17	20	4	4
Deerfield	24	27	24	27	..	..	28	31	24	27	4	4	21	24	17	20	4	4
Pompano	24	27	24	27	..	..	29	32	24	27	5	5	22	25	17	20	5	5
Ft. Lauderdale	24	27	25	28			29	32	25	28	4	4	22	25	18	21	4	4
Dania	24	27	25	28			29	32	25	28	4	4	22	25	18	21	4	4
Hallandale	25	28	25	28	..	..	29	32	25	28	4	4	22	25	18	21	4	4
Fulford	25	28	25	28	..	..	29	32	25	28	4	4	22	25	18	21	4	4
Arch Creek	25	28	25	28	..	..	29	32	25	28	4	4	22	25	18	21	4	4
Little River	25	28	26	29			29	32	25	28	4	4	23	26	18½	21½	4½	4½
Lemon City	25	28	26	29			30	33	26	29	4	4	23	26	18½	21½	4½	4½
Miami	25	28	26	29			30	33	26	29	4	4	23	26	18½	21½	4½	4½
Cocoanut Grove	26	29	26	29	..	..	30	33	26	29	4	4	23	26	18½	21½	4½	4½
Larkin	26	29	26	29	..	..	30	33	26	29	4	4	23	26	18½	21½	4½	4½
Perrine	26	29	27	30			30	33	27	30	3	3	23	26	19	22	4	4
Peters	26	29	27	30			30	33	27	30	3	3	23	26	19	22	4	4
Goulds	26	29	27	30			30	33	27	30	3	3	23	26	19	22	4	4
Princeton	26	29	27	30			30	33	27	30	3	3	23	26	19	22	4	4
Homestead	26	29	27	30			31	34	27	30	4	4	24	27	19	22	5	5
Jewfish	27	30	28	31			31	34	28	31	3	3	24	27	20	23	4	4
Marathon	29	32	31	34			33	36	31	34	2	2	26	29	22	25	4	4

Exhibit 20.

Comparative statement of rates on vegetables per crate of 50 lbs.

VEGETABLES, per crate of 50 pounds.

	In effect prior to July 15th, 1910	Effective July 15th, 1910		Ordered effective Jan. 2d, 1912	
	Any Quantity	C.L.	L.C.L.	C.L.	L.C.L.
10	8	6	9	6	8
20	8	6	9	6	8
30	8	7	10	6	8
40	8	7	10	6	8
50	8	8	11	7	9
60	8	8	11	7	9
70	8	9	12	8	10
80	10	9	12	8	10
90	10	10	13	8.5	10.5
100	12	10	13	8.5	10.5
110	12	11	14	9	12
120	13	11	14	9	12
130	13	12	15	10	13
140	14	12	15	10	13
150	14	13	16	11	14
160	14	13	16	11	14
170	16	14	17	11.5	14.5
180	16	14	17	11.5	14.5
190	16	15	18	12	15
200	16	15	18	12	15
210	18	16	19	13	16
220	18	16	19	13	16
230	22	17	20	13.5	16.5
240	22	17	20	13.5	16.5
250	22	18	21	14	17
260	23	18	21	14	17
270	23	19	22	15	18
280	23	19	22	15	18
290	24	20	23	15.5	18.5
300	24	20	23	15.5	18.5
310	24	21	24	16	19

	In effect prior to July 15th, 1910 Any Quantity	Effective July 15th, 1910 C.L.	Effective July 15th, 1910 L.C.L.	Ordered effective Jan. 2d, 1912 C.L.	Ordered effective Jan. 2d, 1912 L.C.L.
320	25	21	24	16	19
325	25	21	24	17	20
330	25	21	24	17	20
340	25	22	25	17	20
350	25	22	25	18	21
360	25	22	25	18	21
370	25	23	26	18.5	21.5
375	29	23	26	18.5	21.5
380	29	23	26	18.5	21.5
390	31	23	26	19	22
400	35	24	27	19	22
410	38	24	27	20	23
420	39	24	27	20	23
430	39	25	28	21	24
440	40	25	28	21	24
450	40	25	28	22	25
460	41	26	29	22	25
470	41	26	29	23	26
480	42	26	29	23	26
490	42	27	30	24	27
500	43	27	30	24	27

Exhibit 21.

Comparative statement of rates on Citrus Fruits per crate of 80 lbs.

CITRUS FRUITS, per crate of 80 lbs.

	In effect prior to July 15th, 1910 Any Quantity	Effective July 15th, 1910 C.L.	Effective July 15th, 1910 L.C.L.	Ordered effective Jan. 2d, 1912 C.L.	Ordered effective Jan. 2d, 1912 L.C.L.
10	10	8	11	9	12
20	10	8	11	9	12
30	10	8	11	9	12
40	10	9	12	9	12
50	10	10	13	10	13
60	10	11	14	10	13

	In effect prior to July 15th, 1910 Any Quantity	Effective July 15th, 1910 C.L.	L.C.L.	Ordered effective Jan. 2d, 1912 C.L.	L.C.L.
70	10	12	15	11	14
80	15	13	16	11	14
90	15	14	17	12	15
100	17	15	18	12	15
110	17	16	19	13	16
120	18	17	20	13	16
130	18	18	21	14	17
140	20	19	22	14	17
150	20	20	23	15	18
160	20	20	23	15	18
170	24	21	24	16	19
180	24	21	24	16	19
190	24	22	25	17	20
200	24	22	25	17	20
210	24	23	26	18	21
220	24	23	26	18	21
230	25	24	27	19	22
240	25	24	27	19	22
250	25	25	28	20	23
260	25	25	28	20	23
270	25	26	29	21	24
280	25	26	29	21	24
290	30	27	30	22	25
300	30	27	30	22	25
310	30	28	31	23	26
320	30	28	31	23	26
325	30	28	31	24	27
330	30	28	31	24	27
340	30	29	32	24	27
350	32	29	32	25	28
360	33	29	32	25	28
370	33	30	33	26	29
375	37	30	33	26	29
380	37	30	33	26	29
390	39	30	33	27	30
400	43	31	34	27	30
410	43	31	34	28	31

	In effect prior to July 15th, 1910 Any Quantity	Effective July 15th, 1910 C.L.	Effective July 15th, 1910 L.C.L.	Ordered effective Jan. 2d, 1912 C.L.	Ordered effective Jan. 2d, 1912 L.C.L.
420.....	43	31	34	28	31
430.....	43	32	35	29	32
440.....	43	32	35	29	32
450.....	43	32	35	30	33
460.....	44	33	36	30	33
470.....	44	33	36	31	34
480.....	44	33	36	31	34
490.....	45	34	37	32	35
500.....	45	34	37	32	35

60 *Motion for Temporary Restraining Order.*

Filed December 26, 1911.

In the Commerce Court of the United States, Term 1911.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a Corporation, etc., Petitioner,
v.
UNITED STATES, Respondent.

Petition for Injunction.

And now comes the petitioner by Alex. St. Clair-Abrams and Fred C. Bryan, its Solicitors, and moves the Court for a temporary restraining order in the above entitled cause as prayed for in the prayer of its petition, that otherwise irreparable damage would ensue to the petitioner.

ALEX. ST. CLAIR-ABRAMS,
FRED'K C. BRYAN,
JOHN DOYLE CARMODY,
Solicitors for Petitioner.

61 *Order Granting 60-day Suspension of Order of Interstate Commerce Commission.*

Entered December 30, 1911.

United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervener.

On Application for Temporary Restraining Order.

Mr. Alex. St. Clair-Abrams, for the Petitioner.
Hon. Winfred T. Denison, Assistant Attorney General, for the United States.
Mr. Charles W. Needham, for the Interstate Commerce Commission.

The above entitled case came on for hearing before the undersigned, one of the Judges of the United States Commerce Court, at

the court room of said court in the City of Washington, on the 29th day of December, 1911, at 10:30 o'clock A. M., upon the application of petitioner for an order suspending an order of the Interstate Commerce Commission dated November 6, 1911, wherein and whereby said petitioner was ordered, among other things, to cease and desist on or before January 2d, 1912, and for a period of two years thereafter abstain from exacting for the transportation of pineapples, citrus fruits, and vegetables in carloads and less than carloads from points of production upon petitioner's line of railway to Jacksonville, Fla., when destined for points beyond in other States, any rates in excess of those prescribed by said order, pending application to the United States Commerce Court for its
62 order or injunction suspending or restraining the enforcement of said order pending the final hearing and determination of this suit.

Now, on this 30th day of December, 1911, the undersigned, having considered the pleadings, affidavits, and exhibits filed herein as well as the arguments of counsel, finds that petitioner by its petition presents a case for the consideration of the United States Commerce Court of apparent merit and that said case presents questions which ought not to be determined on this application; and also finds from said pleadings, affidavits and exhibits that irreparable damage will result to the petitioner if said order becomes effective and the same shall afterwards be vacated and set aside by the Commerce Court, and that the amount of such damage is the difference between the sum of money to be received by petitioner under existing rates and the sum of money to be received under the rates prescribed by the Interstate Commerce Commission in the order of which complaint is made. The undersigned also finds that said damage would be irreparable for the reason that there exists no adequate remedy whereby said petitioner might be reimbursed for the losses sustained in case said order should be held invalid by the Commerce Court.

Therefore, in view of the facts appearing of record and the findings above mentioned, it is ordered and adjudged that the order of the Interstate Commerce Commission above mentioned and described be and the same is hereby suspended for the period of sixty (60) days from the date hereof, pending application to the United States Commerce Court for its order or injunction in this behalf.

This order, however, is made upon the express condition that the petitioner shall within ten days from the date hereof execute
63 and file in the office of the Clerk of the United States Commerce Court a bond to the United States, with sufficient surety to be approved by one of the Judges of the Commerce Court, for the use and benefit of any person, firm or corporation that may be damaged by the making of this order, in the sum of Fifty Thousand Dollars ($50,000), conditioned that petitioner will pay to said parties or any of them who may be damaged as aforesaid, all damages which may accrue to them or it by reason of the temporary

suspension of the order of the Interstate Commerce Commission as herein provided.

JOHN E. CARLAND,
One of the Judges of the United States Commerce Court.

Dated December 30, 1911.

64 *Order Extending Time to File Bond.*

Entered January 5, 1912.

In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a Corporation, Petitioner,
vs.
UNITED STATES, Respondent.

It satisfactorily appearing to the undersigned Judge of the United States Commerce Court that the above named petitioner will not be able to execute and file the bond provided for in the order made by the undersigned in the above case on the thirtieth day of December, 1911, within the time therein fixed, it is ordered that the time mentioned in said order for the filing of said bond be and the same is hereby extended to and including January fifteenth, 1912; and it is further ordered that in the event that said bond is not furnished within the time herein limited, the order of the undersigned made December thirtieth, 1911, temporarily suspending the order of the Interstate Commerce Commission therein mentioned, shall be null and void.

Dated January 5, 1912.

JOHN E. CARLAND,
One of the Judges of the U. S. Commerce Court.

65 *Order Designating Judge Archbald to Hear Testimony.*

Entered January 6, 1912.

United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a Corporation, Petitioner.

vs.

UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

Order Designating Judge Archbald to Hear Testimony.

In said cause it is ordered that the Honorable Robert W. Archbald, Associate Judge of this Court, be and he is hereby designated to hear testimony and to rule upon the admissibility of evidence.

MARTIN A. KNAPP,
Presiding Judge.

January 6, 1912.

In The United States Commerce Court.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation, petitioner, *v.* UNITED STATES, RESPONDENT. INTERSTATE Commerce Commission, intervening respondent.	No. 58.

ANSWER OF THE INTERSTATE COMMERCE COMMISSION.

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto or to so much or such parts thereof as this respondent is advised is material for it to make answer unto, answers and says:

I.

This respondent admits that the petitioner is a corporation chartered by and existing under the laws of the State of Florida, but respondent says that the petitioner operates under two charters or grants from the State of Florida; that its main line extends in said State from the city of Jacksonville south to Homestead, a point on the Atlantic coast,

a distance of about 394 miles, known and hereafter referred to as the main line, and that the other line extends in said State from Homestead over the Florida keys to Key West, a distance of about 122 miles, said last-mentioned line being known and is hereafter referred to as the oversea extension; that said main line is normal in cost of construction, not exceeding $35,000 per mile; that a considerable part of the freight traffic of the main line consists of fruit and vegetables; that the oversea extension is abnormal in cost of construction, costing more than $160,000 per mile, and at present serves principally Key West and the island of Cuba, places heretofore served by water carriers connecting with the petitioner's main line at Miami, in the State of Florida.

II.

This respondent denies each and every allegation in the said petition regarding the cost of said main line, and alleges that the cost as stated in said petition is grossly exaggerated, as appears from the books and reports of said petitioner. That the present value of said main line, as shown by estimates of the cost of reproduction made for said company, which estimates are in its possession, show that the reproduction value of said main line, exclusive of right of way, does not exceed at the present time $11,500,000, including equipment, as this respondent is informed and believes. This respondent alleges that the main line of said rail-

road from Jacksonville to Homestead, a distance of 394 miles, including right of way and equipment, did not cost to exceed the sum of $13,500,000, as this respondent is informed and believes, and that the present value of the same does not, including equipment, exceed the sum of $14,000,000.

That the main line was constructed out of receipts from the sale of stocks and bonds, which were nearly all purchased by H. M. Flagler, the president of the company; that up to and including June 30, 1908, the total amount of stock issued was $1,000,000, par value, that the first mortgage bonds aggregated, face value, $7,259,000, and the second mortgage income bonds aggregated, face value, $6,000,000.

That the said issue of income bonds were sold to Mr. Flagler, as this respondent is informed and as the books of petitioner show, at 50 cents on the dollar, the company realizing only $3,000,000 therefor; that the said income bonds are improperly charged at their face value into the property account of said company; that said property account also includes other items improperly charged thereto, as will more fully appear upon the hearing hereof, by reason whereof said property account is inflated far beyond the actual cost of the main line.

That in the fiscal year ending June 30, 1909, said first mortgage bonds were refunded, by a new issue of first mortgage bonds of the par value of $10,000,000; that the said income bonds, amounting to $6,000,000, were refunded at par, and new second

mortgage income bonds were issued of the par value of $20,000,000. That in the fiscal year ending June 30, 1910, said issue of capital stock was increased to $3,000,000, and in the fiscal year ending June 30, 1911, the capital stock was increased to $5,000,000. That the said increases in bonds and capital stock were for the purpose of constructing the oversea extension of petitioner's line.

This respondent denies that said income bonds, last issue, were sold at par, but alleges that, as shown by the books of the company, the entire issue was taken by Mr. Flagler at a sum not exceeding $17,000,000.

This respondent further alleges that the said oversea extension of petitioner's railroad, covering a distance of 122 miles, has cost, as shown by the books of said company, over $20,000,000; that it was built and constructed by the petitioner with full knowledge at the time that there did not exist any traffic, which the petitioner was not already carrying, that would warrant an expectation that the earnings upon said extension would pay the cost of its maintenance and operation, or give any present return upon the investment.

III.

This respondent denies the allegations that the earnings of said main line have not been, or will not be at the rates prescribed by said petitioner, sufficient to pay a reasonable return on the capital invested in said main line or upon the value thereof; on the contrary, this respondent alleges that the

traffic upon said main line, originating on or destined to the main land in the State of Florida and from the water lines heretofore connecting at Miami from Key West and the island of Cuba, has steadily increased and is increasing; that, as shown by the reports and books of said petitioner, the net revenues from said traffic on the main line during the last year would pay a return of 8 per cent upon the total cost of the main line and the value thereof.

That during the last year, as respondent is informed, the said petitioner was unable to carry the traffic offered on the main line, and did not provide sufficient cars therefor; that with adequate facilities, properly operated, the traffic would, at the rates prescribed by this respondent in the order complained of, produce a net return to the petitioner equal to and exceeding 8 per cent on the total cost of the said main line or the value thereof, and therefore there is not and can not be any confiscation of the petitioner's property.

IV.

This respondent admits that on November 6, 1911, it made and entered the report and order set forth as Exhibit 1 to said petition. And this respondent alleges that prior to the time it entered said order it made an investigation and gave to said petitioner the full hearing provided for in and by section 15 of the act to regulate commerce, and otherwise qualified itself to make said report and order, including the duties imposed upon it by law and specifically set forth in sections 13, 14,

and 15 of said act; that the petitioner appeared before said respondent at said hearing and was fully heard touching each and every matter set forth in the complaint therein and in this respondent's said report, and as to each and all of the matters set forth and complained of in the petition herein; that your respondent duly considered and in its report fully set forth its conclusions of fact thereon and determined said questions, matters, and things affecting the cost of transportation and the rates upon citrus fruits and vegetables over the lines of the petitioner and the other defendants in said proceeding, as more fully appears in said report; that in making said report and order this respondent considered every fact, circumstance, and condition mentioned in the petition herein and gave due and proper weight thereto, and said order is in all respects lawful, just, and reasonable.

V.

This respondent alleges that it did consider said oversea extension, and its conclusions are set forth in its said report; that this respondent did not, and does not now, consider said oversea extension as such a part of the original main line of said petitioner's line that the rates upon citrus fruits and vegetables grown and shipped upon the main line should be charged unreasonably high rates in order to enable the petitioner to earn sufficient income therefrom to pay a return upon the investment in said oversea extension; that said extension is an unusual, abnormal, and very expen-

sive construction, and the sources from which the petitioner expects to receive additional and new traffic and to earn additional revenues, over the traffic and revenues upon its main line, are uncertain and indefinite as to amount, and may not be realized for some years.

That while this respondent did, in the fixing of a reasonable rate for the transportation of fruits and vegetables over the line of the petitioner, consider the cost of its entire property, including that of the oversea extension, it did not believe that, in the determination of such rates, it must of necessity make them sufficiently high to yield what might, in other circumstances, be a due return upon the cost of this extension.

VI.

This respondent denies that said order will deprive said petitioner of the just compensation or of the fair return upon its property to which it is entitled under the Constitution and other laws of the United States.

VII.

Except as herein expressly admitted, this respondent denies the truth of each and all of the allegations contained in said petition, in so far as they conflict either with the allegations herein, or with the statements and conclusions of fact set forth in said report, which is hereby referred to and made a part hereof.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable

court shall direct, and hereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By CHARLES W. NEEDHAM,
Its Solicitor.

CITY OF WASHINGTON,
District of Columbia, ss:

Charles A. Prouty, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true, except as to the matters stated on information and belief and as to those matters he believes it to be true.

CHARLES A. PROUTY.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 25th day of January, 1912.

H. S. MILSTEAD.
Notary Public

O

74 In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a Corporation, Petitioner,
v.
UNITED STATES, Respondent.

Answer of the United States.

Filed Jan. 25, 1912.

Comes now the United States, respondent, by its counsel, and, for answer to the petition filed against it in the above-entitled cause, says:

1, 2. That it admits the allegations contained in paragraphs 1 and 2 of the petition.

3. That it admits the allegation in paragraph 3 of the petition that the petitioner has been engaged in the interstate transportation, among other traffic, of citrous fruits, vegetables, and pineapples from points of production on the lines of its road to points outside of and beyond the terminus of its line of road at Jacksonville, Florida, in other States of the United States; and this respondent further admits that the petitioner has constructed numerous sidetracks running into and beside the numerous orange groves, pineapple farms, and vegetable farms to the packing houses and to transport and carry empty cars and place them in front of said packing houses, groves, and farms; but this respondent is informed and believes, and
75 therefore charges as a fact, that in a great many instances the said sidetracks are constructed under contracts between the shippers and the petitioner, in and by which the petitioner furnishes only the material for the construction of the said tracks and does not purchase any right of way or pay rental for any right of way, and that, in many instances, the cost and expense of the construction of the said sidetracks is refunded to the said petitioner by the shippers; respondent further alleges that the said sidetracks are cheaply constructed for temporary use, with little or no extra cost for the repair and maintenance thereof, and are easily removed and relaid at other places as time and convenience may require; that the construction and maintenance of said sidetracks and the removing and relaying of the same, in the manner and form as outlined, take the place of permanent stations and shipping points on the line of the petitioner, which it would be necessary for it to construct and maintain at a much higher and more permanent cost and expense, and the petitioner is thus enabled to save large sums of money which it would otherwise be compelled to expend in costly and permanent improvements, and that by reason thereof the advantages which accrue to the petitioner are vastly greater than the advantages which accrue to the shippers and growers.

Further answering paragraph 3, respondent has no knowledge

that the petitioner is compelled annually to rent large num-
76 bers of refrigerator and ventilated cars in which to pack and transport the pineapples, vegetables, and citrous fruits without charging shippers anything extra for providing said cars, and it neither admits nor denies the same, but alleges that the fact, if it is a fact, is immaterial for the purposes of this case, and if the same becomes material upon the hearing it will require strict proof thereof.

This respondent alleges that it is the duty of the petitioner to furnish transportation for the said pineapples, vegetables, and citrous fruits without charging the shippers extra for providing the said transportation and the equipment, and this respondent alleges that whether the petitioner rents the said cars as claimed in its said petition, or purchases and maintains the same as its own equipment, as it alleges it would have to do, is wholly immaterial, for that the matter of renting such cars or purchasing the same is a matter of railroad operation separate and distinct from and in no way connected with the right of the petitioner to charge rates and charges for freight transported on the line of its said road; and if it is more economical to rent the said cars than it is to purchase and maintain the same, then, in the event the said petitioner purchases and maintains the said cars, the shippers represented by this respondent should not be compelled to pay unreasonable rates and charges in order that the petitioner may purchase the said new equipment and maintain the same.

77 This respondent has no knowledge as to whether or not the expenses incurred by the said petitioner, referred to in paragraph 3 of the petition, were paid out of rates allowed it by the State Railroad Commission of Florida and the Interstate Commerce Commission, and it neither admits nor denies the same; and this respondent alleges that the said allegation is wholly immaterial for the purposes of this case, and that if it becomes material upon the hearing, this respondent will require strict proof of the same.

Further answering, this respondent says that it has no knowledge that for many years prior to the fiscal year ending June 30, 1910, the petitioner's line of railroad had an annual deficit between its receipts and its expenditures and fixed charges, and that no dividends whatsoever were paid on its capital stock for the past ten or twelve years, and it neither admits nor denies the same; but this respondent alleges that such fact, if it be a fact, is wholly immaterial for the purposes of this case, and if it becomes material upon the hearing, respondent will require strict proof of the same.

Further answering, and as to the proceedings commenced by the Florida Fruit and Vegetable Shippers' Protective Association before the Interstate Commerce Commission in the year 1908, this respondent says that the matters and things referred to in the petition were fully covered by the report of the Interstate Commerce Com-
mission in Florida Fruit and Vegetable Shippers' Protective
78 Association v. Atlantic Coast Line Railroad Company (14 I. C. C. Reports, 476), decided June 25, 1908, and the order entered in pursuance of the said report, a copy of which will be

offered in evidence in behalf of this respondent upon the hearing hereof and to which reference will be made.

4. That it admits that the Florida Fruit and Vegetable Shippers' Protective Association in the year 1910 made its complaint because of the rates charged by the petitioner on pineapples, and that on the said complaint the Interstate Commerce Commission did order the rate on pineapples reduced; and this respondent alleges that the matters and things referred to in the petition were fully covered in the report of the Interstate Commerce Commission in Florida Fruit and Vegetable Shippers' Protective Association v. Atlantic Coast Line Railroad Company et al., No. 1168, and Florida Fruit and Vegetable Shippers' Protective Association v. Alabama and Vicksburg Railway Company et al., No. 2566 (consolidated), 17 I. C. C. Rep., 552, filed February 8, 1910, and the order entered in pursuance thereof, a copy of which report and order will be offered in evidence upon the hearing hereof, and to which reference will be made.

But this respondent denies that the said reduction in the rate on pineapples was made in view of the competition with Cuba, and denies that by reason of the said reduction and that by reason of the alleged freeze affecting the pineapple crop, the
79 revenue of the petitioner was reduced $153,000 below the revenue derived from the same source during the fiscal year ending June 30, 1910; this respondent further denies that the petitioner cheerfully obeyed the order of the Interstate Commerce Commission reducing the rates on pineapples out of sympathy for the growers and from a desire to aid them, but your petitioner is informed and believes, and therefore charges as a fact, that the failure of the petitioner to contest the order of the Interstate Commerce Commission, was because the petitioner believed that the rates prescribed by the Interstate Commerce Commission by its said order were entirely just and reasonable, that it was without grounds to contest the said order, and that any attempt on the part of the petitioner to contest the said order would be unsuccessful.

5. That it admits that the Florida Fruit and Vegetable Shippers Protective Association filed their supplemental complaint with the Interstate Commerce Commission praying for a reduction of the rates on citrous fruits and vegetables, and that the petitioner appeared before the commission and resisted the said petition; and this respondent alleges that the matters and things referred to in paragraph 5 of the said petition were fully covered by the report of the Interstate Commerce Commission in Florida Fruit and Vegetable Shippers' Protective Association v. Atlantic Coast Line Railroad Company et al., No. 1168, and Railroad Commission
80 of the State of Florida v. Seaboard Air Line Railway et al., No. 3808 (consolidated), 22 I. C. C. Rep. 11, and the order entered thereon November 6, 1911, copies of which are attached to the petition, to which reference is here made.

6. That it has no knowledge of the matters and things alleged in paragraph 6 of the complaint except as hereinafter stated, and neither admits nor denies the same, except as hereinafter stated,

but in so far as the same may become material upon the hearing it will require strict proof thereof.

As to the allegation that the reductions now required by the order of the Interstate Commerce Commission will inflict upon the petitioner a loss annually of $130,873.13, this respondent denies the same; and this respondent charges that the loss which it is alleged the petitioner will sustain is exaggerated and entirely speculative; and while this respondent is not able at this time to state definitely the loss, if any, which the petitioner will sustain, this respondent alleges that the amount will not approximate any where near to the amount claimed. This respondent further denies that the petitioner is threatened with any deficit after paying interest on its general mortgage and income bonds by reason of the reduction of rates ordered by the Interstate Commerce Commission, and alleges that if the petitioner is threatened with any deficit it is not due to such reduction.

7. That it denies that if the petitioner is required to obey the order of the Interstate Commerce Commission reducing its
81 rates on citrous fruits and vegetables pending the final determination of this suit, that the petitioner will suffer and sustain irreparable damage in that it will be required to transport citrous fruits and vegetables at less than a reasonable rate. And this respondent alleges that in the event the petitioner is allowed to maintain the rates and charges which the Interstate Commerce Commission has condemned, pending the determination of this suit, that the shippers of citrous fruits and vegetables, which number approximately 3,000, will suffer irreparable loss and injury in that they will not be able to recover the damages sustained by them by reason of the collection of the unreasonable and excessive rates, and are, as compared to the petitioner, at a decided disadvantage, for that the claims to be adjusted are peculiarly within the knowledge of the petitioner, that it is more familiar with and has better access to its tariffs which are within its own custody, that it knows what freight it has received for shipment and to what points the same is to be shipped and the rates applicable thereto; that it has possession and custody of its records and books of account showing the movement of the freight and the rates and charges thereon and can determine the amount of the loss more accurately and promptly and with less delay and expense than anyone else, and has all the evidence concentrated at a single point, whereas the shippers,
82 numbering approximately 3,000, and scattered throughout the State of Florida, many of whom have few and small shipments, are not familiar with the records, books, waybills, and shipping receipts of the petitioner, have no access thereto, and are utterly without facilities or evidence with which to recover the damages they will sustain, and which the petitioner will require of them before it will pay their said claims.

Respondent is informed and believes, and therefore charges as a fact, that from present indications, there will be shipped by growers located on the line of the petitioner during the shipping season commencing on or about January 1, 1912, and extending to and

including June 30, 1912, fully 5,000 cars of tomatoes, the average reduction in the rate if enforced amounting to 5 cents per crate of 50 pounds; that the average minimum to the car is 480 crates, and the average excessive freight paid out would be $24 per car, or $120,000 loss and damage to the growers and shippers of tomatoes.

Respondent is informed and believes, and therefore charges as a fact, that there will be shipped during the said season approximately 200,000 boxes of oranges over the line of the petitioner, amounting to 666 car loads based on 300 boxes to the *crate;* the average reduction in the orange rate, if enforced, amounts to 5 cents per box, or $15 per car, amounting to $9,990 loss and damage to the growers and shippers of oranges. Respondent
83 further alleges, on information and belief, that not more than 5 per cent of the cars shipped are loaded with tomatoes grown by one grower to each car; that approximately 55 per cent of the cars shipped contain tomatoes grown and owned by from 2 to 15 growers to each car; that approximately 45 per cent of the tomatoes shipped are owned by 15 or more growers to each car; that in case the petitioner is permitted to collect the excessive rates, it will be impossible, after a lapse of time, for the growers to cooperate for the collection of the reparation.

Respondent is informed and believes, and therefore charges as a fact, that a large number of the growers ship their tomatoes to various commission merchants throughout the United States, who solicit and sell the same on a commission basis and render accounts of sales to the grower, from which accounts are deducted the freight charges and the commission for selling. In all such cases it will be necessary for the growers to secure freight bills from the commission merchants and get detailed evidence required by the petitioner upon which to base claims for reparation before the petitioner will receive and consider their said claims.

8. That it has no knowledge of the matters and things alleged in paragraph 8 of the said petition, and neither admits nor denies the same. But this respondent alleges that the matters and things alleged in said paragraph 8 are immaterial for the purposes of this case, but if the same become material upon the hearing this
84 respondent will require strict proof thereof.

9. That it has no knowledge of the matters and things alleged in paragraph 9 of the petition, and neither admits nor denies the same. But this respondent says that the matters and things alleged in said paragraph 9 are immaterial for the purposes of this case, and if the same become material upon the hearing this respondent will require strict proof thereof.

10. That it has no knowledge of the matters and things alleged in paragraph 10 of the petition, except as hereinafter stated, and neither admits nor denies the same, except as hereinafter stated. But this respondent alleges that the matters and things referred to in said paragraph 10 are immaterial for the purposes of this case, and if the same becomes material upon the hearing this respondent will require strict proof thereof.

Further answering said paragraph 10, this respondent denies that the petitioner is entitled to earn at least 8 per cent on the present value of its property, when, in order to pay the said 8 per cent it exacts unreasonable rates and charges from the shippers of citrous fruits and vegetables; and that the reasonableness of the rates and charges on citrous fruits and vegetables is not to be tested by the rate of interest which the petitioner may be entitled to earn under the laws of the State of Florida on the present value of its property. And this respondent denies that it is unreasonable
85 to fix rates on freight at figures that will not enable the petitioner to pay the interest charges on its first-mortgage bonds, or on its general mortgage income bonds; but this respondent alleges that if the petitioner earned no interest whatever on its said bonds, that fact would not warrant the petitioner in fixing an unreasonably high rate on citrous fruits and vegetables.

11. That it has no knowledge of the matters and things alleged in paragraph 11 of the petition, and neither admits nor denies the same. But this respondent alleges that the matters and things referred to in said paragraph 11 are immaterial for the purposes of this case, and if the same become material upon the hearing this respondent will require strict proof thereof.

12. That it is informed and believes that the line of railroads of the petitioner as described in paragraph 12 is substantially correct; but respondent denies that the line of road from Jacksonville to Miami was first completed at a cost to the petitioner of over $18,000,000. Respondent further denies that the present value of the line to Miami, including right of way, terminals, depots, equipment, roadbed, and rail is not less than $30,000,000; but this respondent alleges that the said values are exaggerated and do not approximate anywhere near the said sums claimed by the petitioner. As to mileage of the petitioner's line of road and the extensions thereof referred to in said paragraph 12, this respondent has no
86 knowledge, and neither admits nor denies the same; and if the same becomes material upon the hearing, it will require strict proof thereof. This respondent denies that the cost of the said road from Jacksonville to Miami and Knights Key and the branches aggregate $31,928,741.92 and further denies that the entire cost of the road and equipments from Jacksonville to Miami and branches, exclusive of the extension, was $25,897,359.20. And this respondent alleges that the said amounts are largely exaggerated and that the actual cost of the two branches of the said line of railroad does not approximate anywhere near to the said sums.

13. That it denies that the pineapple, citrous fruit, and vegetable crop for the present fiscal year will be still smaller than it was for the fiscal year ending June 30, 1911, and denies that at the present rates the petitioner will suffer a heavy loss in income from that source. Respondent alleges that from present indications, and unless unforeseen conditions intervene to destroy or injure the pineapple, citrous fruit, and vegetable crop, it will be equal to or larger than that of the last fiscal year, and the revenues from that source will be increased and not reduced. Respondent denies that if the

rates ordered by the Interstate Commerce Commission under date of November 6, 1911, are enforced the aggregate loss of income to the petitioner will largely exceed $131,000, and denies that only a large increase in its passenger business and in its freight business from other sources will enable the petitioner to pay the
87 small interest on its bonds and avoid a deficit. Respondent alleges that the alleged loss to your petitioner is largely exaggerated and speculative and will not approximate anywhere near to the amount claimed, and that with the increase of the crop and the reduced rates, which will cause a larger volume of traffic to move if the petitioner will furnish the facilities and equipment to move the traffic, which in the past it has negligently and carelessly frequently failed to do, and with the increase in its passenger business and its freight business from other sources, the amount of the loss, if any, sustained by the petitioner by reason of the reduced rates will not affect it in any manner.

14. That it has no knowledge of the matters and things alleged in paragraph 14 of the petition, except as hereinafter stated, and neither admits nor denies the same, except as hereinafter stated, but alleges that the said matters and things are immaterial for the purposes of this case; and if the same become material upon the hearing this respondent will require strict proof thereof. Respondent is informed and believes and therefore alleges that the matters and things referred to in paragraph 14 are largely exaggerated, and that the estimates given by the petitioner are largely in excess of what the actual figures will show.

15. That it has no knowledge of the matters and things alleged in paragraph 15 of the petition, and it neither admits nor denies the same, but alleges that the said matters and things are
88 immaterial for the purposes of this case; and if the same become material upon the hearing this respondent will require strict proof thereof.

16. That it has no knowledge of the matters and things alleged in paragraph 16 of the petition and neither admits nor denies the same, but alleges that the same are immaterial for the purposes of this case; and if the same become material upon the hearing this respondent will require strict proof thereof.

17. That it has no knowledge of the matters and things alleged in paragraph 17 of the petition, except as hereinafter stated, and neither admits nor denies the same, except as hereinafter stated; and respondent alleges that the said matters and things are immaterial for the purposes of this case, and if the same become material upon the hearing this respondent will require strict proof thereof.

This respondent is informed and believes and therefore alleges that the improvements and the expenditures referred to in paragraph 17 of the petition are largely exaggerated and that the improvements are not nearly as extensive as is claimed; nor do the sums expended for improvements approximate anywhere near the amounts claimed. This respondent further alleges the improvements and expenditures if made are permanent improvements and

expenditures and will last for many years to come and should
89 not be charged wholly against, or considered in connection with, the revenue of the petitioner for the time within which the order of the Interstate Commerce Commission is to remain in force and effect.

18. That it denies the allegations contained in paragraph 18 of the petition.

19. That it denies the allegations contained in paragraph 19 of the petition.

20. That it denies the allegations contained in paragraph 20 of the petition.

21. That it denies the allegations contained in paragraph 21 of the petition.

22. That it denies the allegations contained in paragraph 22 of the petition.

23. That it denies the error claimed on the part of the Interstate Commerce Commission in paragraph 23 of the petition. As to the allegation that the petitioner has not merged with any other railroad and as to the operation and separate and distinct organization of the petitioner this respondent says that it has no knowledge of the facts as alleged and neither admits nor denies the same; and it alleges that the same are immaterial for the purposes of this case, and if the same become material upon the hearing, this respondent will require strict proof thereof.

24. That it denies the allegations of paragraph 24 of the petition.

25. That it denies the allegations of paragraph 25 of the petition.

90 Further answering the said petition, and each and every part thereof, and in so far as the same has not heretofore been admitted, denied, or answered, this respondent says that the matters and things referred to in the said petition and each and all of the same were presented to the Interstate Commerce Commission in the proceedings pending before it on which its said report and order were based; that the matters and things in the said petition referred to and each and all of the same were matters and things peculiarly within the province of the said Interstate Commerce Commission to hear and determine under the act to regulate commerce, and that the said Interstate Commerce Commission did fully hear and determine the same, and each and every part of the same, and did give thereto, and to all parts thereof, such deliberation and weight as the same, and each and every part of the same, were entitled to receive; that in its report in writing with respect to the matters and things so heard and determined by the Interstate Commerce Commission which states its conclusion, together with its decision, order, or requirement in the premises, a copy of which is attached to the said petition, to which reference is here made, the matters and things set forth in the said petition were fully covered and foreclosed by findings of fact, and the report made and the

order entered by the Interstate Commerce Commission in the
91 premises were and are within the power of that body to make and enter, and the matters and things alleged in the said petition are insufficient to disturb the same.

Further answering the said petition and each and every part of the same in so far as the same has not heretofore been admitted, denied, or answered, this respondent says that as to any fact or facts alleged in said petition, or any part of the same, which deny or which seek to deny any fact or facts found by the Interstate Commerce Commission in its said report; and as to any fact or facts alleged in said petition or any part of the same which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said report, and as to any and all inferences of fact from any particular fact or facts alleged in the said petition or any part of the same which seek to deny or which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said report; and as to any fact or facts alleged in said petition or any part of the same which set up or which seek to set up matters and things which were not before the Interstate Commerce Commission or which are not referred to in its said report and order; and as to any fact or facts alleged in said petition or any part of the same which attack or which seek to attack the report and order of the Interstate Commerce Commission and to show facts differently from what the said report and order show from the face thereof; and as
92 to any allegations in said petition or any part of the same which allege that facts were found by the Interstate Commerce Commission in its report and order which as shown from the face thereof in fact were not so found; and as to any conclusions of law alleged and insisted upon in the said petition or any part of the same which are inconsistent with any conclusions of law held by the Interstate Commerce Commission in its said report; this respondent denies the same and each and every part of the same.

And this respondent now gives notice that upon the final hearing hereof or upon any preliminary hearing hereof, and in accordance with the statute in such case made and provided, it will make and present objections to the sufficiency of the petition and to certain parts thereof and will move to dismiss the said petition, for that the same is insufficient to state any cause of action against the said respondent.

And now having fully answered, this respondent prays that the said petition be dismissed at the petitioner's cost, and for such other and further order as may be appropriate in the premises.

WINFRED T. DENISON,
Assistant Attorney General.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

January, 1912.

93 *Petition of Intervention of the Florida Fruit and Vegetable Shippers Protective Association et al.*

Filed January 29, 1912.

In the Commerce Court of the United States.

FLORIDA EAST COAST RAILWAY COMPANY
vs.
UNITED STATES.

Petition of Intervention of Florida Fruit and Vegetable Shippers Protective Association and the East Coast Fruit and Vegetable Growers Association.

Come now the Florida Fruit & Vegetable Shipper- Protective Association, an unincorporated association composed of a large number of growers and shippers of fruits and vegetables in the State of Florida, and the East Coast Fruit and Vegetable Growers Association, an unincorporated association, composed of about one thousand growers and shippers of fruit and vegetables from points along the East Coast Railway, by A. A. Boggs, their attorney, and respectfully show unto the Court that the said Florida Fruit and Vegetable Shippers Protective Association was the original petitioner in the case of the Florida Fruit and Vegetable Shippers Protective Association vs Atlantic Coast Line Railway Company et als., in which cause order of the Interstate Commerce Commission attacked in this proceeding was made, and that the East Coast Fruit and Vegetable Growers Association became a party by intervention to the said cause; that the said Associations and their members are interested in the order of the Interstate Commerce Commission attached in this proceeding.

Wherefore, Petitioners respectfully pray to be made parties defendant to the said cause and that the appearance of the said

94 A. A. Boggs may be entered as their attorney therein.

And Petitioners will ever pray.

A. A. BOGGS,
Attorney for Florida Fruit and Vegetable Shippers Protective Association and East Coast Fruit and Vegetable Growers Association.

UNITED STATES COMMERCE COURT.

Term 1911.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation, *Petitioner*, vs. UNITED STATES, *Respondent*, INTERSTATE COMMERCE COMMISSION, *Intervenor*.	*Petition for Injunction, etc.*

To the Respondent and Intervenor and their Solicitors:

You will please take notice that on the 5th day of February, 1912, we will move the Court for leave to amend the petition of the petitioner in the foregoing cause, a copy of the amendment being annexed to said motion.

(Signed) ALEX. ST. CLAIR-ABRAMS,
(Signed) FREDERICK C. BRYAN,
Solicitors for Petitioner.

UNITED STATES COMMERCE COURT.

Term 1911.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,
Petitioner,
vs.
UNITED STATES,
Respondent,
INTERSTATE COMMERCE COMMISSION,
Intervenor.
} *Petition for Injunction, etc.*

Now comes the petitioner, Florida East Coast Railway Company, a corporation, by its Solicitors, Alex. St. Clair-Abrams and Frederick C. Bryan, and moves the Court for leave to amend the petition herein filed so as to add thereto the additional averments of error on the part of the Interstate Commerce Commission, a copy of which is hereto annexed, on the following grounds:

1. That said amendment is necessary to present to the Court all the real issues existing between the petitioner and the respondent and intervenor.
2. Because the amendments are necessary to enable the Court to determine every question raised in the averments of the petition.

(Signed) ALEX. ST. CLAIR-ABRAMS,
(Signed) FREDERICK C. BRYAN,
Solicitors for Petitioner.

UNITED STATES COMMERCE COURT.

Term 1911.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation, *Petitioner*, vs. UNITED STATES, *Respondent*, INTERSTATE COMMERCE COMMISSION, *Intervenor*.	*Petition for Injunction, etc.*

And now comes the petitioner by Alex. St. Clair-Abrams and Frederick C. Bryan, its Solicitors, and, by leave of the Court first had and obtained, amends the petition after the twenty-fifth paragraph thereof as follows:

25-1-5. That the said Interstate Commerce Commission erred in its order, dated November 6, 1911, in reducing the rates on pineapples, citrus fruits and vegetables in that there was no evidence before the said Interstate Commerce Commission that the then existing rates were unjust or unreasonable, the petition of the Florida Fruit & Vegetable Shippers' Protective Association, asking for said reduction, being based entirely on the fact that the rates on pineapples had been previously reduced; and the Interstate

Commerce Commission was without power to reduce the rates without evidence that the existing rates were unjust and unreasonable.

25 2-5. That the Interstate Commerce Commission erred in its order, dated November 6, 1911, in holding that the building of the extension from Miami to Key West imposes burdens on the growers of pineapples, citrus fruits and vegetables on the line of the road from Miami to Jacksonville, when, in truth and in fact, the building of said extension and the business resulting from its construction had reduced the burden of the growers of pineapples, citrus fruits and vegetables as shown by the voluntary reduction of the rates thereon which went into effect July 15, 1910; and the Interstate Commerce Commission was without power of law to determine rates based upon such consideration.

25 3-5. That the said Interstate Commerce Commission erred in its order, dated November 6, 1911, in ignoring the present value of petitioner's line of road and the conditions existing at this time over the entire line, the said Interstate Commerce Commission being without power of law to establish rates based upon ignoring any part of the main line of a railroad, the extension from Miami to Key West being an extension of the main line of petitioner's road.

25 4-5. That the said Interstate Commerce Commission erred in its order, dated November 6, 1911, in that, by said order, the effect was and will be to confiscate this petitioner's property, to deprive it of just compensation

for its services, and to take its property without due process of law, said order being beyond the power of law vested in said Interstate Commerce Commission.

(Signed) ALEX. ST. CLAIR-ABRAMS,
(Signed) FREDERICK C. BRYAN,
Solicitors for Petitioner.

STATE OF FLORIDA,
COUNTY OF DUVAL.

Personally appeared before me Joseph R. Parrott, who, being duly sworn, says that he is the President of the petitioner, Florida East Coast Railway Company, a corporation; that he has read the foregoing amendments and as to those matters and things stated therein that are of his own knowledge he knows them to be true and that as to those matters and things stated on information and belief he believes them to be true.

(Signed) JOSEPH R. PARROTT.

Sworn to and subscribed before me this 27th day of January, A. D. 1912.

(Signed) J. F. HORNE,
Notary Public State at Large.
My Commission expires June 19, 1913.
(Seal)

100 *Notice and Motion to Extend Restraining Order.*

Filed February 3, 1912.

In the Commerce Court of the United States, Term 1911.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a Corporation, Petitioner,
v.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Intervenor.

Petition for Injunction, etc.

To the United States, Respondent; the Interstate Commerce Commission, Intervenor, and their Solicitors:

You will please take notice that on the 8 day of February, A. D. 1912, we will move the Court to extend the restraining order heretofore granted pursuant to the motion hereto annexed and for the reasons and on the grounds set forth in said motion.

ALEX. ST. CLAIR-ABRAMS,
FRED C. BRYAN,
Solicitors for Petitioner.

Service acknowledged and receipt of copy this 2d day of February 1912.

CHAS. W. NEEDHAM, *Att'y;*
BLACKBURN ESTERLINE,
For the United States.

February 2, 1912.

101 In the Commerce Court of the United States, Term 1911.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a Corporation, Petitioner,
v.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Intervenor.

Petition for Injunction, etc.

Now comes the petitioner by Alex. St. Clair-Abrams and Frederick C. Bryan, its Solicitors, and moves the Court for an extension of the restraining order granted in the above entitled cause, dated December 30, 1911, for sixty days from the 28th day of February, A. D. 1912, on the following grounds:

1. Because it has been impossible to take the testimony in said cause within the sixty days ending February 28, 1912.

2. Because owing to the necessary absence of counsel for the Respondent and Intervenor, it is not possible to take any further testimony before the sixty days originally granted will have expired.

3. Because there is no one in the State of Florida before whom the testimony can be taken.

4. Because the necessary absence of counsel for Respondent and Intervenor prevents the taking of any further testimony before the sixty days will have expired.

102 5. Because a large amount of additional testimony is necessary to be taken to properly present the issues involved in the case; that the petitioner is ready and willing to take the testimony but cannot do so for the reasons hereinbefore set forth.

Annexed hereto is an affidavit of Alex. St. Clair-Abrams, Solicitor for Petitioner, supporting the motion.

ALEX. ST. CLAIR-ABRAMS,
FRED'K C. BRYAN,
Solicitors for Petitioner.

103 In the Commerce Court of the United States.

FLORIDA EAST COAST RAILWAY COMPANY, a Corporation, Petitioner,
v.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Intervenor.

Petition for Injunction, etc.

STATE OF FLORIDA,
County of Duval:

Personally appeared before me Alex. St. Clair-Abrams, who, being duly sworn, says that he is one of the Solicitors for the Petitioner in the above entitled cause and is the Solicitor personally and actively engaged in preparing said case and in submitting the testimony; that this affiant, as Solicitor for Petitioner, filed the petition as soon after receiving the decision of the Interstate Commerce Commission as was necessary to prepare the petition and exhibits; that during three days, in the presence of the Honorable Robert W. Archbald, one of the Judges of the United States Commerce Court, beginning on Thursday, the 18th day of January, 1912, and until Saturday, the 20th, the testimony of 21 witnesses was taken and a large number of exhibits filed in said cause; that, owing to the necessity of the Hon. Robert W. Archbald and the Solicitors for the United States and Interstate Commerce Commission having to return immediately to Washington, the taking of the testimony had to be suspended; that the Petitioner has been ready ever since to resume the taking of the testimony; that a large amount of additional testimony
104 is necessary to be taken which will consume on the part of the Petitioner at least two weeks in the taking; that the Petitioner is ready and anxious to complete the taking of the testimony, but cannot do so until the attorneys for the Respondent and Inter-

venor can arrange to be present at the taking of the testimony; that all of the witnesses, with a single exception, reside in the State of Florida; that to bring them to Washington to take their testimony would involve enormous expense to the petitioner and would necessarily endanger the operation of Petitioner's railroad at this time; this being the busiest time of the year on Petitioner's road and a number of the witnesses being employés of this Petitioner now actively engaged in their respective employments.

Affiant further says that the Petitioner has filed a bond in the sum of Fifty Thousand Dollars, ($50,000), which bond has been approved and is now on file in this Court conditioned to pay to all persons injured by the granting of the restraining order such damage as they may have sustained if the Petitioner should not prevail on a final hearing; and the Petitioner stands ready to fully carry out and perform the covenants and conditions of said bond.

Affiant further sets forth that, for reasons stated in the sworn petition, irreparable injury would be done to the Petitioner if the restraining order was not extended as herein prayed for; that the petitioner is not in laches but has used not only due but extraordinary diligence in the preparation of the case so as to submit the testimony within the sixty days limited by the original order, and could complete the taking of Petitioner's testimony within
105 the time if a hearing could be had and the testimony taken.

ALEX. ST. CLAIR-ABRAMS,
Solicitor for Petitioner.

Sworn to and subscribed before me this 31st day of January, 1912.

LOU BECCA PINNELL,
Notary Public, State at Large.

My Commission expires Jan. 27/1915.

106 *Journal Entry.*

Proceedings of February 6, 1912.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

In said cause, upon the application of counsel for the petitioner, leave was granted to file an amended petition, with the understanding that the answers of the Interstate Commerce Commission and the United States heretofore filed to the original petition be allowed to stand as answers to the amended petition.

107 *Motion of Interstate Commerce Commission to Dissolve Injunction.*

Filed February 8, 1912.

In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,

v.

THE UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Motion by the Intervening Respondent to Dissolve Injunction.

Now comes the Interstate Commerce Commission, intervening respondent, by Charles W. Needham, its Solicitor, and moves the Court to dissolve the injunction heretofore granted in the above entitled cause, upon the following grounds:

1. Since the granting of the said injunction the petitioner has put in evidence its statement of the cost of the main line of said railroad, which evidence shows that the statement as to the cost in the petition and affidavits upon which the injunction was granted are grossly exaggerated.

2. That the evidence presented by the petitioner herein, giving the cost of reproduction of said railroad and equipment, shows that the statements in the petition and affidavits upon which the injunction was granted were grossly exaggerated.

108 3. That the net revenue from said road during the last fiscal year as shown by the reports of the said railroad would pay a dividend of more than eight per cent. upon the cost of said railroad, and, therefore, there can be no confiscation.

4. That the fruit and vegetable growers of Florida ought not to be charged unreasonable rates in order to enable the said petitioner to earn an income upon its Over-sea extension, which extension is about 122 miles in length and has cost, as shown by the petitioner's evidence, over twenty millions of dollars.

5. There is no equity in the petition.

INTERSTATE COMMERCE COMMISSION.
CHAS. W. NEEDHAM, *Its Solicitor.*

109 *Journal Entry.*

Proceedings of February 9, 1912.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,

vs.

UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

Said cause came on for hearing on the petition for preliminary injunction and on the motion of the Interstate Commerce Commis-

sion to dissolve the temporary restraining order heretofore granted. The Court stated it would first hear the motion to dissolve the restraining order, and thereupon the arguments of counsel were commenced, Mr. Assistant Attorney General Denison appearing on behalf of the United States, Mr. Alexander St. Clair-Abrams on behalf of the Petitioners, and Mr. Charles W. Needham on behalf of the Interstate Commerce Commission.

110 In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
v.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

Order of Intervention.

Entered February 10, 1912.

The Florida Fruit & Vegetable Shippers Protective Association and East Coast Fruit & Vegetable Growers Association, having filed and presented their petition for intervention herein and it appearing to the Court from the said petition that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered, That the Florida Fruit & Vegetable Shippers Protective Association and East Coast Fruit and Vegetable Growers Association be and they are hereby allowed to intervene and become parties intervener and to be heard by their counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said interveners to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said interveners and their course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

111 *Journal Entry.*

Proceedings of February 10, 1912.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

Thereupon said cause came on for further hearing on the petition for preliminary injunction and on the motion of the Inter-

state Commerce Commission to dissolve the temporary restraining order heretofore granted, and the arguments of counsel were concluded, Mr. Charles W. Needham appearing on behalf of the Interstate Commerce Commission, and Mr. Alexander St. Clair-Abrams on behalf of the petitioner. Thereupon the cause was taken under advisement by the Court.

112 *Order Granting Preliminary Injunction.*

Entered February 13, 1912.

United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervener.

On Application for a Temporary Injunction.

Mr. Alex. St. Clair-Abrams, for the Petitioner.
Hon. Winfred T. Denison, Assistant Attorney General, for the United States.
Mr. Charles W. Needham, for the Interstate Commerce Commission.

The above entitled case came on for hearing before the Court at the Court Room of said Court in the City of Washington on the 9th day of February, 1912, upon the application of petitioner for a temporary injunction pending the final hearing of the case.

Now on this 13th day of February, 1912, the Court having considered the pleadings, affidavits and exhibits filed herein, as well as the arguments of counsel, orders and adjudges that the order of the Interstate Commerce Commission dated November 6th, 1911, wherein and whereby said petitioner was ordered, among other things, to cease and desist on or before January 2nd, 1912, and for a period of two years thereafter abstain from exacting for the transportation of pineapples, citrus fruits and vegetables in carloads and less than carloads from points of production upon petitioner's line of railway to Jacksonville, Fla., when destined for points beyond in other states, any rates in excess of those prescribed by said order, be and the same is hereby suspended and enjoined pending the final hearing and determination of this case.

Said Court further orders and adjudges that before the
113 order hereby granted shall become effective said petitioner shall execute with sufficient surety to be approved by one of the Judges of this Court, and file the same with the Clerk of this Court, a bond to the United States, for the use and benefit of the

pay to any shipper or shippers shipping freight over its line during the continuance of the suspension order thereby granted and to any shipper who has shipped freight over the line of petitioner's railroad since January 2nd, 1912, the difference which any shipper has paid since said date or shall pay during the continuance of the suspension order thereby granted, for the shipment of freight, between the rate that has been or shall be charged by the petitioner at the time of such shipment and the rate prescribed by the Interstate Commerce Commission in the order thereby suspended, if it shall be finally decided by this Court that the order of the Interstate Commerce Commission of November 6, 1911, is legal and valid.

117 Now, therefore, if the above bounden Florida East Coast Railway Company and Fidelity & Deposit Company of Maryland, both or either of them, shall well and truly pay to any and all shipper or shippers who has or have shipped freight over the line of the Florida East Coast Railway since January 2nd, 1912, the difference which any shipper or shippers has or have paid since said date, or shall pay during the continuance of the suspension order thereby granted for the shipment of freight, between the rate that has been or shall be charged by the Florida East Coast Railway Company at the time of such shipment and the rate prescribed by the Interstate Commerce *Court* thereby suspended, if it shall be finally decided by the Commerce Court of the United States that the order of the Interstate Commerce Commission of November 6, 1911, is legal and valid, then this obligation shall be void; otherwise to remain in full force and effect.

In witness whereof the said Florida East Coast Railway Company has set its hand and seal, attested by its Vice-President and Assistant Secretary, and the Fidelity and Deposit Company of Maryland has caused these presents to be signed by its duly authorized attorney in fact, the day and year first above written.

FLORIDA EAST COAST RAILWAY COMPANY,
By J. P. BECKWITH, *Vice-President.*

[Seal of Florida East Coast Railway Company.]

Attest:
H. S. JENISON,
Assistant Secretary.

Witnesses for Florida East Coast Railway Company:
A. V. S. SMITH.
LOU BECCA PINNELL.

118 FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By H. B. HODGE, *Its Attorney in Fact.*

Attest:
—— ——, *Agent.*

[Seal of the Fidelity & Deposit Company of Maryland.]

Witnesses for Fidelity & Deposit Company of Maryland:
R. B. H. LYON.
OLIVE G. NELSON.

STATE OF FLORIDA,
County of Duval:

Personally appeared before me J. P. Beckwith, Vice-President of the Florida East Coast Railway Company, and H. S. Jenison, Assistant Secretary of said corporation, to me well known and known to me to be said officers and to be the persons who signed the foregoing bond, who acknowledged to me that they executed the same for and in behalf of the Florida East Coast Railway Company for the purposes therein expressed.

In witness whereof, I have hereunto set my hand and official seal at Jacksonville, Florida, this the 20th day of February, A. D. 1912.

[NOTARIAL SEAL.] LOU BECCA PINNELL,
Notary Public for State at Large.

My Commission expires Jan. 27/1915.

119 DISTRICT OF COLUMBIA,
City of Washington:

Personally appeared before me H. B. Hodge to me well known to be the Attorney in Fact of the Fidelity & Deposit Company of Maryland and known to me as the person who executed the foregoing instrument, who acknowledged that he executed the same for and in behalf of the Fidelity & Deposit Company of Maryland for the purpose therein expressed.

In witness whereof I have hereunto set my hand and official seal at Washington, District of Columbia, this the 23d day of February, A. D. 1912.

[NOTARIAL SEAL.] GEORGE W. SMITH,
Notary Public.

My Commission expires March 23, 1915.

Approved:

MARTIN A. KNAPP,
Presiding Judge.

120 *Petition of Intervention of the Railroad Commissioners of the State of Florida.*

Filed February 29, 1912.

In the Commerce Court of the United States.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a Corporation, Petitioner,
vs.
THE UNITED STATES, Respondent.

Intervention of the Railroad Commissioners of the State of Florida.

Come now R. Hudson Burr, Newton A. Blitch and Royal C. Dunn as Railroad Commissioners of the State of Florida and show unto the Court that they were parties in interest to the proceeding before the Interstate Commerce Commission in case #3808 entitled Railroad Commission of the State of Florida vs. the Seaboard Air Line Railway and the Atlantic Coast Line Railroad Company in which case was entered the order of the Interstate Commerce Commission on the 1st day of December 1911 which is complained of in the petition in this cause and they therefore do hereby intervene in this cause and adopt the answer heretofore filed by the Interstate Commrce Commission as their answer to the petition in said cause.

R. HUDSON BURR,
N. A. BLITCH,
ROYAL C. DUNN,
Railroad Commissioners of the State of Florida.

F. M. HUDSON,
Counsel for Intervenors.

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IN THE

UNITED STATES COMMERCE COURT

TESTIMONY TAKEN IN ST. AUGUSTINE, FLORIDA, ON THURSDAY, JANUARY 18TH, 1912, AND FOLLOWING DAYS, BEFORE HONORABLE R. W. ARCHBALD, ASSOCIATE JUDGE UNITED STATES COMMERCE COURT.

No. 58.

FLORIDA EAST COAST RAILWAY CO., *Petitioner.*

v.

UNITED STATES, *Respondent,*

INTERSTATE COMMERCE COMMISSION, ET AL., *Interveners.*

Mr. Alex. St. Clair Abrams and Mr. Frederick C. Bryan, for the Railroad Company;
Mr. Blackburn Esterline, for the Department of Justice;
Mr. Charles W. Needham, for the Interstate Commerce Commission;
Mr. Frank M. Hudson, for the Railroad Commission of Florida;
Mr. A. A. Boggs, for the Florida Fruit and Vegetable Shippers' Association, and the East Coast Fruit and Vegetable Growers' Association.

Thereupon the complainant to maintain the issues upon its part produced and caused to be sworn as a witness one F. A. Morgan, who testified as follows:

F. A. MORGAN.

Direct examination.

MR. ABRAMS: Q. What is your name?
A. F. A. Morgan.

Q. Where do you reside?
A. Orlando, Florida.
Q. Where did you reside in 1907?
A. Titusville, Florida.
Q. What County is Titusville in?
A. Brevard.
Q. When did you move to Orlando?
A. March, 1911.
Q. What County is Orlando in?
A. Orange County.
Q. In 1907, what was your business or occupation?
A. Abstractor of titles.
Q. What knowledge had you of the values of real estate in the territory which you investigated?
A. Why, I had the knowledge of being in the abstract business, and knowing what prices the lands brought being transferred from one party to another, and being in the real estate business there part of the time.
Q. Did you make any examination of the lands that you so investigated?
A. Yes, sir.
Q. Were you assisted by any one?
A. Yes, sir.
Q. By whom?
A. By Mr. Frees, Mr. Cox and Mr. Bouy.
Q. Are you now in any way connected with the Florida East Coast Railway?
A. No, sir.
Q. How many years' experience had you in your knowledge of the values of real estate in that territory?
A. About fourteen years.
Q. In making that estimate of the values, did you take into consideration any buildings on the land?
A. No, sir.
Q. You just valued the bare land itself?
A. And as to the way the land was cut up, the way the right of way went through.
Q. Did you examine and ascertain the values of

the lands other than land used by the railroad company for railroad purposes?

A. Yes, sir.

Q. Now please state to the Court what territory you examined, and the valuations in 1907, fixed by you as the result of your investigation?

A. Well, we examined the right of way from the north line of Brevard County, which is just south of Oak Hill, I don't know the mile post, I can tell by referring to my report though—

Q. You may do that?

A. Mile post 142, that is the mile post to the north line of the county, and went down to Pineda, that is mile post 182, about forty miles.

Q. Did you examine any of the branch roads?

A. Yes, sir; I examined the branch from Titusville, to the County line, about eighteen miles, of the Sanford Branch.

Q. Now go on and state to the court what your valuations were?

A. My valuations on the right of way, giving the acreage that the right of way had over the different sections at one—

MR. NEEDHAM: Your Honor, we object to that, the witness has not qualified himself to show the values of the lands.

Q. You say you are in the real estate business, and the abstract business, what do you mean by abstract business?

A. Looking up the titles of lands, running them down from the Government to the different purchasers.

Q. What was your knowledge of the value of these lands when you examined them?

A. The prices for which lands were sold for in that County.

Q. In that territory?

A. In that territory.

Q. Did you ascertain the value of adjacent lands?

A. Yes, sir.

Q. You say you have handled real estate in that territory?

A. Yes, sir; sold real estate in that territory, right on the right of way.

Q. Sold it for others, or for yourself?

A. Sold it for others, and made abstracts, and it was resold again, so I know exactly what figures those lands brought.

THE COURT: Do I understand your objection was to the competency?

MR. ESTERLINE: No, sir, he has not qualified to testify to land values a distance of forty miles.

THE COURT: Do you desire to cross-examine him before his testimony goes further on his qualification?

MR. ESTERLINE: Yes.

Cross-examination.

MR. ESTERLINE: Q. How long have you lived in Florida, Mr. Morgan?

A. I have been in Florida since 1892.

Q. Where did you come from to Florida?

A. Philadelphia.

Q. Where have you lived in Florida?

A. In Titusville.

Q. How long?

A. From 1892 to 1911. At least I have lived in Titusville and Melbourne, on the East Coast.

Q. You own any real estate down there?

A. No, sir; not now.

Q. Own none at all?

A. No, sir.

Q. You are not a purchaser of real estate in your own name, or real estate owner?

A. In Orlando, I am.

Q. I mean in Brevard County?

A. No, sir.

Q. You are not?

A. No, sir.

Q. Your experience has been limited to abstracting titles?

A. Yes, sir.

Q. Did you do that business on your own account?

A. Yes, sir.

Q. Had your own business?

A. Yes, sir.

Q. And you made these abstracts for people who were buying lands there, and delivered the abstracts to them, for which they paid you?

A. Yes, sir.

Q. And as between the purchaser and the seller of the real estate you were not connected with the transactions?

A. No, sir, except when I sold lands myself.

Q. The most of that land to which you referred, from mile post 142 to 182 you did not sell any of that land?

A. I sold some of it.

Q. How much?

A. I sold about fifteen thousand acres in the Gillespin Grant.

Q. Where is that?

A. That is south of Titusville.

Q. Is that included in the 142 and the 182 mile post?

A. The Gillespin Grant commences about the 155 mile post and it runs down to the 167 mile post, twelve miles long, the railroad runs twelve miles through the grant.

Q. Then you have not sold any beyond either one of those extremes?

A. No, sir.

Q. And your work as to that land has been limited solely to the abstracting?

A. Yes, sir.

Q. And the land varies somewhat in those communities, does it not, for a distance of forty miles, according to the localities?

A. Yes, sir.

Q. Land at mile post 182 could be much higher or lower value than land at mile post 142?

A. Yes, sir.

Q. There is no definiteness about that situation is there?

A. No, it all depends on the quality of the land and the section of the country it is in.

MR. ESTERLINE: I think that is sufficient objection.

THE COURT: Objection overruled.

MR. ESTERLINE: Exception.

THE COURT: Exception noted.

Re-direct examination.

MR. ABRAMS: Q. State how you arrived at the values?

A. We arrived at the values by walking over the right of way and into the other. I had maps of the land there, and we took into consideration the quality of the land, the way the railroad cut it up. In other words, we based our valuations on this point: if there was no railroad going through there, if they had to come through there, had no railroad been there, we based that valuation on what they would have to pay if they went through that land. Some land they cut off a little piece probably cut off a triangle and made a little piece absolutely worthless after the railroad went through, before the railroad went through that land could probably be used.

MR. NEEDHAM: Did you include the damages to the adjoining property in the valuation of the land taken?

A. No, sir.

Q. Now, in regard to the sale of lands, did you consider as well the valuation of adjacent lands in making estimates?

A. Yes, what the value of the land was worth through which the road ran.

Q. Was that in excess of the price lands were selling for in the market?

A. No, sir; it was about what we thought the land would sell for, the market price of the land at that time.

Q. Now, in regard to the lands not on the right of way, how did you arrive at values of lands used for railroad purposes, section houses, station houses and the like?

A. We did not value that.

Q. Didn't you value the land?

A. No, we valued the land they owned outside of the railroad, we valued that according to the value of lands and property in the vicinity where they held their lands.

Q. With regard to this branch from Titusville, to the Volusia County line, did you examine that?

A. Yes, sir; we walked over every inch of the land to the County line.

Q. What was your knowledge of the value of land on that branch?

A. The same as they were on the main line.

Q. Can you state what the aggregate values of the right of way was on the territory you examined?

A. Forty-four thousand nine hundred and seventy dollars.

Q. Did that include the branch?

A. Yes, sir; that included the whole right of way.

Q. What was your estimate, the aggregate estimate of the value of the lands outside of the right of way used by the railroad company for railroad purposes?

A. Twenty-nine thousand, seven hundred and forty-eight dollars, which made the total aggregate seventy-four thousand seven hundred and eighty-eight dollars.

Q. Now, Mr. Morgan, since you made that estimate of values, state if you know whether or not values have increased or decreased in that territory that you valued in 1907?

A. Well, they have increased considerably, some places they have increased as much as one hundred per cent and two hundred per cent.

Q. Can you give an estimate of about the average increase of that entire territory?

A. I should think the entire average would be not less than fifty per cent for the whole right of way.

Q. Taking the whole lands?

A. That would cover the whole thing.

Q. What has caused that increase in value in that territory, can you state?

A. Well, people coming in and lands moving, being transferred from one to another, these colonists coming in and buying land and settling them up.

Q. Where was the greatest increase in values in that territory?

A. Down through the Gillespin Grant, the Gillespin Grant, at the time we estimated the right of way, and in fact after that, sold for two dollars an acre, and it was not six months after that before it was turned around and sold for seven dollars and then it was resold again for ten dollars, and now it was selling last March when I left there for thirty and forty dollars an acre.

Q. Where is that, north or south?

A. Right south of Titusville.

Q. What has been the difference north of Smyrna?

A. I couldn't tell you about north of Smyrna.

Q. Is it not a fact though that territory there has been an enormous increase in values and population in the last five years?

A. Yes, it has increased in population and value, but what has been the increase I couldn't tell you, it is only in here that I know about.

Q. When you left Titusville last March, you kept in touch with the values, continued your business until you left there, did you not?

A. Yes, sir.

MR. ABRAMS: Now, if the Court please, I can't, of course, I don't propose to offer the original, because I told Judge Locke I would have copies made and offer the copies.

THE COURT: Did you duplicate your work at that time?

MR. ABRAMS: Yes, sir.

THE COURT: And you have it in your hand there in the form of a schedule?

MR. ABRAMS: Yes, sir. That gives the railway through each tract of land and the valuation. I want to offer this in evidence.

MR. ESTERLINE: This is objected to as the witness has not properly qualified to testify as to the values, and the documents are not sufficiently authenticated to form a basis of the values of real estate.

THE COURT: I have already passed on the subject of his qualifications. I think he is sufficiently qualified, and with regard to the schedules it seems to me that they may properly come in as a convenient record of the result of the inspection he gave to the road and the value he put upon it, that is the whole purpose of that, of course, it is not valued as an original document but simply as you might say as the result of work on paper.

MR. ESTERLINE: Our objection is that it is not competent to prove the value of the real estate.

MR. F. M. HUDSON: May it please the Court, it seems to me this exhibit is open to another objection, and that is, this is based on the year 1907, and the witness has testified that the average values have risen, but as the Court would know, the average rise in values of real estate do not carry with it necessarily any rise in any particular piece of real estate. Each piece of property must stand or fall on its own merits, and it seems to me it would not hardly be fair to allow this testimony to go in, that this particular property had enhanced fifty per cent in value, without any testimony as to what the changes in the value of this particular property had been.

MR. ABRAMS: If the Court please, so far as the values of property, the witness has testified to fifty per cent increase, on the contrary it would show an average of eighty per cent. Now this man is familiar and the other witnesses are familiar with every foot of that territory. He tells you it has increased in

some places two or three hundred per cent, where there was no settlement four or five years ago, large villages are now in the territory. Now he certainly must know of the increase in the entire territory. If there had been any decrease in that territory he certainly would have known it. Of course, we know there has been an enormous increase everywhere. The census of 1910 shows that the population has increased, and that the increase has been steadily going on ever since. It seems to me he is perfectly qualified to give what he regards as an average, and he may question him as to whether or not that refers only to particular localities or not, but he says he shows in some places an enormous increase, others not so much, but from his knowledge of that land, actual values, and from the actual knowledge of the localities, he makes an estimate of fifty per cent on the whole, and illustrates it by showing the enormous increase in some of the localities but he says the increase in that entire territory has been that much, and I can't see how it would be unfair to counsel.

THE COURT: I will admit it without further argument. I think it is admissible on this ground. He has already testified as to his estimate of the values of the property that he inspected, and the average increase. That of itself would be sufficient you might say, certainly it has some weight on the subject, but this is much more satisfactory when we have the detailed statement put down and in these schedules we have those details, and they are more convincingly, they show the particularity of the work of the examination. I will admit it.

MR. ESTERLINE: Exception.

THE COURT: Exception noted.

Q. Add fifty per cent to the increase, what would be the average value of that territory you examined?

A. $112,077, and it described the kind of land it goes through.

MR. ABRAMS: Now, Doctor, I will offer this in evidence.

MR. NEEDHAM: Subject to exception and correction.

(Filed in evidence marked complainant's Exhibit No. 1.)

Q. Now, Mr. Morgan, you say you lived in Titusville from 1892, to March, 1911, a period of some nineteen years?

A. Yes, sir.

Q. That during that entire time you were engaged in the real estate business and as an abstractor of titles?

A. Yes, the first two years I was not in the abstract of title business, the first two I was not.

Q. What were you doing?

A. I was stenographer for D. L. Golden until I went with Robinson.

Q. Then for seventeen years you were abstractor?

A. Yes, for Robinson and Graham.

Q. During that period of time was the Gillespin Grant the only piece of land you have sold?

A. No, sir; I have sold other lands.

Q. Did it extend generally throughout that period?

A. Yes, sir.

Q. Throughout that territory?

A. Yes, sir.

Q. What personal acquaintance have you with the territory that you estimated and examined, prior to your making estimate of each tract?

A. Well, my knowledge of going up and down the country as I was in the abstract business, seeing the values of lands, and going over the country up and down in the real estate business and seeing lands for sale and what they were selling for, transferred from one party to another, and going up and down looking at the lands, seeing the general improvements in the country there that increased its value.

Q. Now, you have testified to a very great increase

in the Gillespin Grant, you know of any other large quantity in that territory of such increase?

A. Well, yes, take those canal lands down in Township 26 and 27, I know for a fact that Thompson and Jackson bought about one hundred thousand acres of land for three dollars an acre and turned around and sold it for seven, and they are selling that for ten and fifteen, twenty dollars an acre right now.

Q. The East Coast Canal Company has no connection with the East Coast Railroad Company?

A. And take those lands that Robinson and Graham owned, they were sold for about five dollars an acre, and the party that bought them turned around and sold them inside of three months for eight dollars, they got eight dollars an acre for them. And that is the way you will find the general run of land all the way down.

Cross-examination.

MR. ESTERLINE: Q. Mr. Morgan, these lands of Thompson and Jackson, which you say were purchased for two dollars an acre and turned around and sold for seven, what do you know about that transaction?

A. I know it by seeing the deeds.

Q. You saw the deeds?

A. Yes, sir, of the whole.

Q. Of the whole of it?

A. Of the mortgage they put on record to cover the transfer.

Q. The whole of it?

A. Yes, sir; made the abstract, and included the deed and the mortgage in the abstract.

Q. Of the entire transaction?

A. Yes, sir.

Q. Now, you say you became familiar with these lands by going up and down, what do you mean by that?

A. Going through the country, going up and down the road.

Q. How often did you do that?

A. I couldn't tell you, continually during the number of years that I was down there.

Q. Well, was it once a week, or—

A. Oh, no,

Q. One minute,—

A. Sometimes it would be once a month I would go up and down the road, and then it would be six months—

Q. And sometimes a year?

A. Yes, sir.

Q. And there are localities and points along there where you never have been?

A. Not about the railroad, I have been all over it, I walked over every inch of that.

Q. You have walked the whole right of way?

A. Yes, sir.

Q. When did you do that?

A. When I made the examination.

Q. In 1907?

A. Yes, sir.

Q. You have not since that time?

A. No, sir; I have not walked it since that time, I have been over it several times on the train.

Q. During the night time or in the day?

A. No, very seldom at night, but I have walked over every inch of the road of that right of way, I know every inch of it.

Q. You are not in business now?

A. Yes, sir; I am in Orlando, Florida, in business now.

Cross-examination.

MR. NEEDHAM: Q. In valuing a tract of land, what was the width of the right of way?

A. The width of the right of way varied. Some places it was fifty feet, some places it was sixty, some

places it was a hundred. I made maps of the whole right of way, and I counted the ties to see what the width of the right of way was, and then I made maps and platted the right of way, and we figured the acreage out. If the railroad ran through a tract of land we valued it according to the land it ran through. If we valued the land at ten dollars an acre, we valued the right of way at ten dollars an acre.

Q. I understood you to say you took into consideration the way the land was cut?

A. Yes, sir.

Q. And that in some instances there were points that were cut off?

A. Yes, sir.

Q. And left in an irregular shape. In valuing such lands did you take into consideration the effect upon these irregular pieces?

A. Yes, sir. Where it cut off a piece of land absolutely worthless where the railroad went through, we figured that in. In other words, if they went through a piece of property and they ruined a triangular piece of say two acres, we made that up for two acres.

Q. You added the price of the two acres to it?

A. Yes, sir; because that land was absolutely worthless to the owners.

Q. In estimating the value of a piece of land, did you take it at the cost of the adjoining land sold in bulk?

A. Yes, sir.

Q. You did not add anything toward the fact that it was a narrow strip cut through the land?

A. No, we valued it at what the values of the land were in that community, five or ten acres, forty dollars an acre, we valued it by the acre.

Q. Where is that land you speak of worth two dollars an acre at that time, and has this large increase?

A. It was right south of Titusville, it is the Gillespin Grant, it starts right in here (indicating).

Q. What was that land worth at that time?

A. They were selling it in the whole body, forty-two thousand acres, they were asking two dollars for the whole, but they were selling it in small tracts at five and ten dollars an acre.

Q. What do you mean by small tracts, what size?

A. Five and ten acres.

Q. In valuing that land, I notice you put down in one case three acres, and ten one-hundredths of an acre, at fifty dollars, that would be the cost then of the adjoining land?

A. That all depends upon the kind of land you went through. Those lands—

Q. You put there the cost of the selling price of the small lots?

A. Of course, you couldn't buy two acres at the same price you could buy forty thousand acres.

Q. You told me a moment ago that they were selling in five and ten acre lots at ten dollars an acre?

A. Yes, fifteen or twenty, and even to one hundred dollars, it all depends upon the kind of soil and the locality.

Q. You wish to change your answer?

A. Yes, you misunderstood me. They were selling for five and ten acre lots anywhere from five dollars up to fifty and one hundred dollars, it all depended upon the kind of land it went through and the location.

Q. Was it near a town?

A. Why, the Grant starts right in the south edge of Titusville; the north line of the grant is the south line of the city.

Q. How far did the right of way extend through that tract?

A. Twelve miles.

Q. And that begins on page five of your estimate, and extends how far?

A. Down to page six here (indicating).

Q. Can you tell me the amount of acreage that was taken by the railroad in the tract of land?

A. I can't unless I figure it up.

Q. Can you figure it up?

A. I will have to add it up some.

Q. Can you make the total acreage, the total valuation and the price per acre through that particular tract?

A. One hundred and thirty acres.

Q. How much does the valuation aggregate of that?

A. About nineteen hundred dollars.

Q. That begins—

A. Begins here (indicating).

Q. That begins on page five, under the head "amount of land from Titusville to Pineda" and extends down—

A. Down to here (indicating).

Q. And includes the fifth item from the bottom of page six?

A. Yes, sir.

Q. How much would that be per acre?

A. It would be just a little over ten dollars an acre.

Q. You have referred to another tract of land, which you say increased in value, what was that, in townships 26 and 27?

A. The railroad does not pass through that land, that is off from the railroad. The railroad did not pass through that land, that is back from the railroad.

Q. That is no part of this right of way?

A. No, I just gave you that as in illustration, showing how values increase. The railroad does not pass through that.

Q. Is there any other large tract through which the railroad passes that you made valuations?

A. It goes to the Segui Grant.

Q. I mean the distance of the right of way through it? How many miles?

A. It must be about eight or ten miles I suppose, it runs through there.

Q. Where is that found in your exhibit No. one?
A. It runs through here (indicating).
Q. Beginning on page 18, under the head "Sanford Branch, from main line to Titusville," and extending how far?
A. Down here, sir (indicating).
Q. Down to and including the six acres of E. R. Carter?
A. Yes, sir; that is just south of the main line.
Q. Is that included?
A. No, sir; I guess it will come down to here (indicating). Carter is right south of the main line.
Q. Then it includes McCullough?
A. No, Prichett Brothers is the last.
Q. What was that land adjoining the right of way selling for at that time, do you know?
A. Well, I don't know what it was selling for, but I don't know there had not been any sales made. It was leased for turpentine purposes. Segui had leased it to Prichett Brothers. As to what the value of that increased, I could not tell you that.
Q. What was it worth at that time, did you take the asking price?
A. No, we figured it I think about two or three dollars an acre, something like that.
Q. Two or three dollars an acre for the adjoining land?
A. Yes. May be some places it was more, where it passed through hammock land of course we put a much higher value on it. It varies. Some places it goes through rich heavy hammock land, land worth anywhere from fifty to a hundred dollars an acre.
Q. Was worth that at that time?
A. Yes, sir.
Q. But none of it selling at that time?
A. No, that land was in litigation, they couldn't sell it. They wanted to sell it, they could not, it was in litigation, they could not get clear title.
Q. Your estimates were not based on any sales?
A. No, not on any sales, just what we thought the

land was worth, the kind of land and the quality of land.

Q. Do you remember how much you valued the right of way through that tract per acre?

A. No, I do not, it varied.

THE COURT: Can you tell by reference—

A. It shows in the report there.

Q. All of your valuations which are set forth in exhibit one, were made substantially as you made the valuation through these two tracts to which reference has been made?

A. Yes, sir.

Cross-examination.

MR. BOGGS: Q. Mr. Morgan, in making this valuation, did you take into consideration whether the railway company owned the land in fee or whether it had merely an easement across it?

A. No, sir; they owned it in fee. We were not supposed to know whether they owned it at all, what we were supposed to do was to put a valuation on the land as if the railroad was not there and were coming through and had to buy the land and pay for it.

Q. Your valuations were based on the fee simple sale, what people would have to pay for it?

A. Yes, sir; as if it had to be bought.

Q. There is a good deal of that land that was in pine timber, was it not?

A. Yes, pine timber.

Q. In valuing the right of way through those pine woods, did you give to the right of way the value of the adjacent timbered lands, just as if it was the same value as adjacent lands with timber on it?

A. We just valued it so much an acre if they were buying in fifty and forty acre tracts.

Q. Well, with the timber on it, just as if it was pine land with timber on it?

A. Yes, sir.

Q. Is it not a fact that cut over lands in Florida are very much inferior in value than pine woods with the timbered lands?

A. Not always.

Q. Well, very often the case?

A. Some places cut over lands have sold for better prices than they did before.

Q. It is very often of less value as a whole?

A. I could not say it is.

THE COURT: Where it is dependent upon the timber?

A. Of course, it is less value.

Q. Is it not a fact that a very large part of that land is dependent largely upon the timber for its value?

A. No, sir.

Q. That a large part is not dependent upon the timber for its value?

A. No, sir. It can be used for groves and growing things like that, gardens and such.

Q. If you were going out to buy lands in the open woods could you get it cheaper as a general rule if it has been cut over as if it has got the round timber on it?

THE COURT: I think that question ought to be addressed to what the land is valued for.

Q. Would you say that all lands regardless of quality in that territory have increased in value?

A. I say approximately that would be a fair figure to put on it, at least fifty per cent, some have not increased as much, and some two or three hundred, but fifty per cent is a fair value. I think if appraisers were sent out to appraise that road that it would be up to one hundred per cent, the value has increased.

Cross-examination.

MR. HUDSON: Q. Mr. Morgan, you have stated that the values of lands in that vicinity varied from five

to one hundred dollars, did you include any considerable amount of one hundred dollar land in your approximation?

A. No, sir; we just took it as we came along, what we thought the land was worth.

Q. What is the difference in the land that makes some worth five dollars and some one hundred dollars an acre?

A. Well, if you go through hammock land, go through orange groves, some places go right through orange groves, we could not value that at five dollars or five hundred dollars, where they go through a grove and cut through it.

Q. The difference then is due to—

A. To the locality and the land that the road went through.

THE COURT: You took that into consideration in the valuation?

A. Yes, sir; we took that into consideration in the value.

Q. What I am trying to get at without asking you leading questions, Mr. Morgan, is the fact that land is made up of hammock land and pine lands?

A. Pine land and prairie lands and orange groves.

Q. Now the hammock land has more value?

A. Yes, sir.

Q. What has the lowest value?

A. Why open pine scrub lands.

Q. How about the prairie land?

A. Well, sir, that prairie land is good land.

Q. It is better than the pine land?

A. Well, sir, I am not a gardener, I couldn't tell you about that as far as the growing qualities go.

Q. I mean in value?

A. Some of the prairie land is, some is not.

Q. As a matter of fact the railroad runs mostly through the pine and prairie land?

A. No, it does not, it runs through some very valuable property, goes through orange groves, goes through some very valuable property.

Q. But taking it from Titusville down to near Cedar Point, isn't that mainly through pine land?

A. Yes, right there.

Q. And other points there are largely the same way?

A. Yes, sir.

Q. Then the land just north of Titusville, you have mentioned, as the Robinson Graham tract, that is situated west of the railroad?

A. That is on the branch road, it is not on the railroad.

Q. Well, that is west of the main line?

A. No, it is not on the main line at all, it is on the branch road, on the Sanford branch.

Q. I didn't ask you if it was on the main road; I asked you if it was west?

A. Oh, it is west, yes.

Q. Now, is it not a fact that right of way on the main line runs through low and marshy land, which is too low to be planted and used?

A. It does in some places, up in the north end of the county.

Q. North of Titusville?

A. Yes.

Q. How far does it extend through such land as that.

A. Oh, I couldn't tell you exactly, I suppose about four or five miles, and then it goes through that heavy Turnbull Hammock.

Q. You mentioned having worked for Robinson and Graham, were you working for them during the time they acquired the right of way for the Florida East Coast Railroad?

A. No, sir.

Q. Were you working there a short time afterwards?

A. I went to work for Robinson and Graham in 1895.

Q. You know what those lands was worth at the time the Railroad Company acquired them?

A. No, I do not.

Q. The valuation you gave of the year 1907, as I understand it?

A. Yes, sir.

Re-cross-examination.

MR. NEEDHAM: Q. I notice in this exhibit that there is a statement opposite the description of the land as to its character?

A. Yes, sir.

Q. Did you make those—

A. Yes, sir.

Q. Measurements?

A. Mr. Freis and myself.

Q. That describes the character of the land?

A. Yes, sir.

THE COURT: So that report or schedule gives the acreage and character of the land and the value?

A. Yes, sir.

Q. And where it is situated?

A. Yes, sir.

Q. Mile by mile?

A. Yes, sir.

Re-direct examination.

MR. ABRAMS: Q. Is it not a fact that land in Florida close to the railroad has a very considerably higher value than land two or three miles from it?

A. Yes, sir; certainly it has more value.

Q. Isn't that fact more noticeable in Florida than anywheres, and if so, state the reason?

A. Well, I have not been any where in this country except the big cities, but I think it should have the handling of transportation.

Q. What is the character of the soil here, hard clay or sandy?

A. Some of it is sand, and some heavy hammock land, some marl land.

Q. Isn't the most of it sandy soil?

A. Well, all Florida land is sandy.

Q. Now, how are the roads leading from farms, running through heavy sand lands?

A. Yes, they are pretty rotten, pretty bad roads down there.

Q. Then as you approach the railroad the percentage of increase—as you approach the railroad the values increase?

A. Yes, sir.

Q. Very largely?

A. Yes, sir.

Q. This tract you spoke of, how far was that tract you spoke of off the railroad, that has increased so much in value?

A. Why, some parts of that land is six miles from the railroad.

Q. What is the nearest?

A. Along about two or three miles, I couldn't say exactly.

Q. Now, would not the land between that tract and the railroad increase more in value because of greater proximity to the railroad?

A. I should think it would.

Q. In regard to the Gillespin Grant, is it now on the market?

A. Yes, sir; they are selling it, improving it right straight along.

Q. Any town been laid out on it?

A. The town of Gillespin.

Q. To what extent was that a town when you made that estimate?

A. Wasn't any town at all, nothing but woods.

Q. Settlers coming there?

A. Yes, sir; they are cutting roads right through from the Indian River to the St. John's, and settling it up and draining it and improving it generally and settling it up.

(That's all.)

Cross-examination.

MR. ESTERLINE: Q. Mr. Morgan, north of Titusville for about five miles, the land over which the railroad runs on either side is salt marsh?

A. Well, some places it is, it runs through the Turnbull Hammock, that is good land; in some places it is good land, and then it runs through some salt marsh.

Q. About five miles?

A. I couldn't tell you exactly how much it is.

Q. Well, it is considerable?

A. Yes, on the east side and on the west side some places it runs through marsh.

Q. That salt marsh land is not worth much?

A. No, some of it is not.

(That's all.)

(Witness excused.)

Thereupon the Complainant to further maintain the issues upon its part produced and caused to be sworn as a witness J. Otto Fries, who testified as follows:

J. OTTO FRIES.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. John Otto Fries.

Q. Where do you reside at this time?

A. Orlando.

Q. Where did you reside in 1907?

A. In Titusville.

Q. What is your business or occupation?

A. Surveyor.

Q. Did you assist Mr. Cockshutt and Mr. Morgan in making an estimate of the values of land?

A. On part of the land, from Titusville down through Pineda.

Q. What knowledge have you of the values of land, Mr. Fries, in that territory?

A. I was County Surveyor there for twelve years.

Q. Of Brevard County?

A. Yes, sir.

Q. I say what knowledge have you besides being County Surveyor?

A. I surveyed over pretty nearly all of that in there and I heard them talking about selling and buying land.

Q. In that territory to what extent did you go over it and become familiar with the values in that territory?

A. I have been over every forty acre tract of land there, surveyed every section and I have heard what it was selling for and being bought for and what they asked for them and what they would get.

Q. Did you ascertain the values before making any estimate yourself?

A. Yes, sir, I could not help getting some idea of the values while I was going around with the people buying and selling.

Q. Did you ever buy any or sell any yourself?

A. No, sir.

Q. You had no interest in any lands in that territory?

A. Not a bit.

Q. Were you employed by the Florida East Coast Railroad in any capacity when you made this estimate?

A. No, sir.

Q. In making these estimates did you consider any buildings or any building?

A. No, sir. The idea was when we made it up was to give what we believed the railroad would have to pay for the land if it had not been there before and that they were just buying that right of way at that time.

THE COURT: Q. If the railroad had to buy its way through that was the value you put on it?

A. Yes, sir.

Q. Did you make any values higher than what it was selling for at that time? How did you make your valuations?

A. Well, we looked over the area, the location and the quality of the land, what damages it would do to the adjoining land and the land itself, and so on, and if there was a building right up close that would be damaged, probably damaged by the railroad and subject to fire and such things, we took that into consideration.

Q. In making your estimate, what I want to get at, how did you ascertain the figures you have put there?

A. Well, we calculated the area, the location and the value of the land, the damages it would do to that land in the adjoining strips.

Q. Now, suppose it did no damages, what would you place the value at?

A. What we thought it would have to be paid for if they had to buy it.

Q. Well, did you place any value higher than if somebody else had to buy it?

A. No, I believe not; I believe our rate we put on it, if anything, was lower.

Q. Do you think the railroad company if it had to buy land could have got it any cheaper than you placed the value at?

A. Why, that is a hard question, Major; they might have got it cheaper, but I think that is what they ought to have had to pay for it.

Q. Taken as a whole then your estimate—did you ascertain the values of adjacent lands to make those estimates?

A. Yes, sir; we compare with the adjacent lands too.

Q. Did you go through these tracts personally with Mr. Morgan?

A. Yes, sir. I knew every section line and every forty line and every lot line in the whole tract; I

could point it out exactly to the foot when we got to the lines and boundaries.

Q. Did your and Mr. Morgan's estimates agree? A. Yes, we consulted each other about it and looked over the thing.

Q. And arrived at approximately the same figures?

A. Yes, sir; we did.

Q. Then this exhibit that I have filed is the same report that you made jointly and—

A. Yes, sir.

Q. Now, since you made that report state if you have any knowledge of any increase or decrease in the values along the line of that road?

A. I got a good deal of knowledge about it.

Q. How did you get that knowledge?

A. Because most the people from Titusville south and north of Titusville had bought lands and cut them up in smaller lots and then had employed me to go over and show them the lands, and then actually superintending and making plats for subdividing it. I really had charge of the services, although I did not do it myself but my deputies and my men that I had appointed done the work, but I had to go over and see that they executed my orders and what I asked them to do.

Q. Now do you know anything about the branch road from Titusville to the Volusia County Line?

A. I know—I have been asked by Mr. Barrs to go over there; I have been there three times, I think. Looked over the first survey he made; that I found incorrect, and then I went over it and made some corrections, fix some certain points and started over this and then I went over with a man from Orange County; told him how I wanted it done and then he carried out my orders.

A. Well, the price Mr. Barrs told me he charged and had charged and sold for, most of it in case sometimes as much as a thousand per cent from $3.00 and $4.00 and $5.00 an acre up to $50.00 and $100.00 an acre.

Q. Have you from your knowledge of that territory and the values estimated by you and Mr. Morgan and Mr. Cockshutt in 1907 formed any estimate of what the aggregate increase in value has been on that road in 1907 and at the present time?

A. Well, from Titusville south, I was on that, laid out that but I was not on that back road with them but from Titusville south to Pineda a rather low estimate would be fifty per cent, a very low estimate.

Q. What would you think would be a fair estimate, not a low one on that tract?

A. Well, parts of it I know, to my best knowledge two hundred per cent would not be a bit too much. Now, the old Gillespin Grant, that has increased fully two hundred per cent in value.

Q. You say that you think fifty per cent is a low estimate?

A. Yes, a low estimate.

Q. Now, take north of Titusville?

A. Well, that Tirt place, that's in the Grant, that has certainly increased one hundred per cent but there may be some places that have not increased a bit.

Q. Take the whole of that territory you went over, do you think the increase of fifty per cent is excessive or moderate?

A. No, sir, not at all.

Q. In making these original estimates, Mr. Fries, in 1907, did you consider them moderate or excessive?

A. I considered them fair.

Q. Have you any interest at all in this matter?

A. No, sir, not at all.

MR. ABRAMS: The figures being the same figures, of course, as that Exhibit and Exhibit No. 1 is the

joint work of these gentlemen. Q. Go over this exhibit, Mr. Fries, and just explain?

A. My part of it begins on page 5 at the place "Mainline from Titusville to Pineda," and goes to the end of page 17.

THE COURT: In the report for which you are in part responsible and state what the report showed?

A. It showed a description of every piece of land that we passed through, the area and quality of the land and the price we assessed.

THE COURT: The value that you put upon it?

A. Yes, sir, for the right of way.

Q. How long were you employed in making this examination with Mr. Morgan or on your own account?

A. Well, we made it, Mr. Morgan did the work, I think we was on it about five or six days, I think.

Q. Five or six days?

A. Yes, sir. We took about four or five days.

Cross-examination.

MR. ESTERLINE: Q. I understood you to say you were a surveyor?

A. Yes, sir, I was County Surveyor at that time in Brevard County, but at the last election I was elected surveyor in two counties, in Orange County and Brevard County.

Q. But in 1907 when that report was made you were surveyor for Brevard County?

A. Yes, sir.

Q. You are not and were not in the real estate business?

A. No, sir.

Q. In any way?

A. No sir, sold a couple of pieces of land of my own.

Q. And your connection with that report was to take the metes and bounds?

A. Yes, sir.

Q. And all you know about the values was what you saw and what you heard them say and discuss?

A. Well, for a long time, for many years?

Q. Yes, at that time?

A. Yes.

THE COURT: You understood the values at which properties were held through the section of the country through which this railroad runs?

A. Yes, sir.

Q. You heard those values discussed and talked about.

A. Yes, sir, and being called to give my opinion and estimate it.

Q. Was this survey in line with your duties as County Surveyor?

A. No, sir.

Q. It was not?

A. Of course not. I am not sure but Mr. Robbins asked me, he asked me up there who did his work.

Q. What was his occupation?

A. I don't know, I guess he had charge of something there but I don't know that, he didn't tell me.

Q. You did the work for him?

A. Yes.

MR. ABRAMS: Mr. Robbin got him at my request. That work was done when the suit was begun and Mr. Robbins was one of the attorneys for the Florida East Coast Railroad. I wrote him to employ the necessary men, which he did.

Q. Now, as to these increases in values, you say that those increases about which you have been familiar are only of particular places?

A. No, I give it of the whole country around there.

Q. Well, you think the values in particular places affects the whole country notwithstanding the values in other places may not have increased at all?

A. Yes, I think so. Good places increase more in proportion than poor land.

Q. What I mean is from your general estimate

that the land had increased in value in some places and has not increased in other places, I understood you to say?

A. Yes.

Q. So, you average it by saying that the whole has in your judgment increased in value fifty per cent?

A. Well, fully fifty per cent.

Q. And that extends all the way from where?

A. Well, in that part from Titusville to Pineda.

Q. That is a distance of how far?

A. I think it is over thirty miles.

Q. Now, there are some of those places that you have not seen at all, have not paid any attention to?

A. In all my time down there?

Q. In 1907?

A. I have not seen 'em all since 1907, but pretty near all.

Q. But what I mean is that 30 or 40 miles between those two points you have named, you have not kept in touch with all that?

A. In about three-fourths of it, at least.

Q. Now, to what extent, you were just going up and down on the train?

A. No, I went out with parties that wanted to buy that land, took them over and showed them the location, showed them the boundary lines over it and told them the best way to drain and such things as that.

Q. In making these estimates, in making these surveys of yourself it was all done as I understand you to say, both survey and estimating and taking the character of the soil within a period of five or six days?

A. Yes, sir, it was not surveying then because I had surveyed over the thing before; I knew every boundary line, had run the lines off before, that didn't take anything.

Q. You had to move pretty rapidly?

A. Yes, I am a pretty good mover.

Q. You did not stop long during the five or six days?

A. Oh, no, we had plenty of time to do it.

Cross-examination.

Q. When was the main line of the Florida East Coast Railroad built through Brevard County?

A. I couldn't tell you exactly.

Q. Were you living there then?

A. No, it was built to Ft. Pierce when I come on that coast.

Q. Were you familiar with the lands in Brevard County before the railroad came through there?

A. No, sir.

Q. You had no knowledge of the values at the time the right of way was acquired?

A. No, sir.

Q. You don't know anything about what the railroad gave or anything of that sort?

A. No, sir, not at all.

(That's all.)

Re-direct examination.

MR. ABRAMS: Q. Mr. Fries, from the time prior to making that survey were you thoroughly acquainted with the character of the land along that railroad?

A. Yes, sir.

Q. It was not necessary for you to examine the land and qualities at that time, was it?

A. No, the fact was I had looked over that long before I knew anything about this thing.

Q. What I mean is you were familiar with the land and qualities, qualities of hammock land and pine land, various qualities?

A. Yes, sir.

(That's all.)

(Witness excused.)

Thereupon the Complainant to further maintain the issues upon its part produced and caused to be sworn as a witness a Mr. —— Cockshutt, who testified as follows:

MR. COCKSHUTT.

Direct examination.

MR. ABRAMS: Q. Where do you reside?
A. In Brevard County, near Titusville.
Q. How long have you lived there?
A. Since 1868.
Q. Been living there continuously?
A. Yes, sir, lived there continuously.
Q. What is your business or occupation?
A. My occupation now is orange growing.
Q. Are you familiar with the values of land in Volusia County?
A. Somewhat, yes, sir.
Q. How long have you been familiar with the values of land in that County?
A. Well, ever since I have had any experience in cultivating lands.
Q. Did you assist in making a survey and estimating the values of lands in 1907 with Mr. Morgan or Mr. Fries?
A. Mr. Morgan, Mr. Fries and Mr. Bony.
Q. Look at this and see if this covers the territory that you assisted in?
A. I go from the County Line down to Pineda. Yes, sir, I helped on that.
Q. Now you say you were familiar with the values of property there, have you had occasion prior to that time to assist or appraise the values of property in that territory?
A. No, sir, I was called on. I was appointed by the Court to appraise property the right of way from St. Lucie [illegible] to Jensen when the East Coast Railroad went through.

Q. Then you have been familiar with the appraisement of the value of the property?

A. Yes, sir.

MR. ESTERLINE: He says he was appointed once by the Court; he said he was not familiar with the values.

Q. Now, what gave you a knowledge of the values of real estate in that territory?

A. My experience and cultivating of lands.

Q. What do you know about what it was selling for?

A. Only by hearing other people telling what they was getting for land, of course, I was not in the real estate business. Didn't have anything to do with the Court or anything at all about the records like that; only go by what we hear land was selling at.

Q. And by talking about it?

A. By talking about it, yes, sir.

Q. Did that make you acquainted with the values of real estate?

MR. ESTERLINE: I object to that.

THE COURT: You heard the question of real estate values discussed?

A. Yes.

Q. And you knew of sales being made?

A. Yes, sir.

Q. And the prices that were received?

A. Of course, as I say, I don't know it positively but I have reasons to believe it.

Q. You did not take part in selling any yourself?

A. No, sir.

Q. But you heard about sales that were made and the values and the prices that were paid?

A. Yes, sir, and then I knew further by what little I sold of my own land.

Q. You did sell some of your own land?

A. Yes, sir.

MR. ABRAMS: Q. Now, did you go over with these gentlemen as you say?

A. Yes, sir.

Q. Did you assist them in appraising the value of all the property you went over?

A. Why certainly I did. The way we did, we went over the land and looked at the land and took notes of every vacant piece of land that we examined. Each one took his own private notes and then we got together and each one gave his opinion what the value of the land was, and when we could not exactly agree we argued the point out and it was very seldom but what we all three agreed at the same price.

Q. And this report which you made and put in evidence in the former case, you all agreed on those values?

A. Yes, sir.

Q. Now, you have remained in the County and resided continuously there, have you not?

A. Yes, sir.

Q. Can you say whether or not the value of property in the territory in 1907 that you examined has depreciated or increased in value?

A. It has increased in value on account of the improvements that have been made, the settlers coming in and such as that.

Q. Now give your own estimate of what you think has been the average increase in value in that territory in the past five years?

MR. ESTERLINE: I want to object; he says the values increased by reason of settlers coming in. That is not the basis of increases in the value of real estate.

THE COURT: That is a circumstance which goes to affect the values.

MR. ESTERLINE: Yes, he says he knows it has increased and by reason of settlers coming in.

A. And the improvements, I said.

MR. ESTERLINE: Well, there is no statements about question of improvements; some improvements could be put on property that would render it less valuable than before.

THE COURT: I think you may proceed.

MR. ABRAMS: Q. Now, Mr. Cockshutt, what in your opinion, would be a fair percentage of increase in values in that territory that you went over and examined and helped to appraise in 1907, since then?

MR. ESTERLINE: Now, I make the objection, Your Honor, to the witness answering the question on the ground that he has not qualified.

THE COURT: Do you care to ask him any questions before I pass on that subject?

MR. ESTERLINE: No.

THE COURT: It seems to me that he has sufficient qualifications to state it.

MR. ESTERLINE: Exception.

THE COURT: Exception noted.

A. I should certainly make the statement that it has increased fifty per cent or more. I don't know of any place that has depreciated in value at all and some places have increased considerably to my own knowledge because I live close to Titusville, and up above Turnbull it had increased considerably. They are selling lands there for thirty dollars an acre that in 1907 you couldn't sell at a dollar and a quarter an acre.

Q. Had no market price at all?

A. Had no market for it at all and the reason why there is a market for it now is because of the improvements in the land, the drainage and everything and they will become more valuable than what they are even now.

Q. How about south of Titusville?

A. Well, as far as the Gillespin Grant is concerned, I am acquainted with that, and there is considerable improvements going on, considerable dredging and reclaiming and considerable amount of land that was valueless without being ditched.

Q. You heard these other gentlemen testify; I understand you to say you agree with them?

A. Yes, sir.

Cross-examination.

MR. ESTERLINE: Q. Where did you say you lived, Mr. Cockshutt?

A. Well, I am living now on the same place I did in 1868. In 1868 I was living in San Point, Volusia County; after that I was living in Brevard County, a place called all on the same place.

Q. Where do you live now?

A. The same place.

Q. How far do you live from Titusville?

A. Three miles and a half west, it is on the Sanford branch.

Q. You have lived there since 1868?

A. I have lived there since 1868.

Q. You are in the orange growing business?

A. Yes, sir.

Q. How large a place have you?

A. Well, I've got a hundred and twenty acres.

Q. All under cultivation?

A. No, sir.

Q. How many under cultivation?

A. About fifteen.

Q. Of oranges?

A. Yes, sir.

Q. Now, then, this survey that you took with these other gentlemen in 1907, what particular part did you take in that survey?

A. Just give my idea of the value of the land as we came to them.

Q. Had you ever been over them before?

A. Well, yes.

Q. For what purpose?

A. Well, hunting, fishing and going from one place to another.

Q. You did not base your value in 1907 on any knowledge you had of the value by hunting and fishing parties?

A. No, I did not. I don't understand what they are driving at.

Q. No, I am asking in 1907 what you based your knowledge of the values of the lands on?

A. I based my knowledge of the value of the land by what the land would produce and the location of the land.

Q. And had never been over it before except hunting and fishing?

A. I told you, yes, I had been all over that land.

Q. Now these values you say also were based upon what you heard people in the community say who were in the real estate business, did you not?

A. Well, no, not particularly; around about home I did not.

Q. Where was it you heard that?

A. Well, about these improvements where they were selling lands.

Q. Well, I understood you to say you were not a real estate man at all?

A. No, sir, I ain't.

Q. Now this hearing reports about sales and purchases, where did you hear that?

A. Why, general conversations with people you meet with.

Q. Not necessarily real estate men?

A. No.

Q. Anybody that you met?

A. Anybody that you met.

Q. And you were not connected with any of those transactions in any way yourself?

A. No, sir.

Q. And your estimates, your opinion of the values of these lands was based on the reports you heard from time to time, is that right?

A. That is right.

Q. And that extended all the way down to Pineda?

A. I believe—yes, and I believe in answer to one of those questions before that I did not know of any place depreciating in value but these places that have increased in value would make the average up to more than what the former witnesses stated.

Q. You would not want to be understood as saying that any of it has depreciated in value but you have heard no reports?

A. I've heard no reports; I don't see why it should depreciate.

Q. All the reports you have heard are those places which have increased in value?

A. All the reports that I have heard that the lands sold for so much and they got such and such a price.

Q. What particular places have you heard of?

A. The Gillespin Grant and the grant above that what we call the Turnbull.

Q. But down around Pineda and all that country in there?

A. I don't know about that.

Q. As a matter of fact you don't know anything about that, do you, the lands down through there south of the Grant to which you have referred?

A. I don't know whether they are selling lands down there or not.

Q. Now, these lands that cost $1.25 an acre and sold for $30 an acre, that is the transaction you heard about?

A. Yes, sir.

Q. Where did you hear about that?

A. In Titusville.

Q. Talked about it around there?

A. Talked about it around the Court House there.

MR. ABRAMS: Q. Titusville is the County Seat of Brevard County?

A. Yes, sir.

Cross-examination.

MR. NEEDHAM: Q. Did I understand you to say you were appointed Commissioner in the condemnation proceedings for the East Coast Line by the Court?

A. By the Court when the railroad was first coming through there.

Q. When was that?

A. I don't remember the year but it is on record, though, when the railroad did come through.

Q. Can you approximate it?

A. Somewheres along about '94 or '95.

Q. How much territory did you value at that time?

A. From St. Lucie down to Jensen, I don't know the distance.

Q. Was there a considerable territory involved?

A. Quite a considerable territory.

Q. Who were the other Commissioners?

A. Frank Budge was one, Frank Durand was another and Joe Mindle.

MR. ABRAMS: That territory is now in another County.

MR. NEEDHAM: Is not in this County?

A. It is not in this County now, it was in Brevard County but Brevard County has been changed.

Q. Is that territory which you valued at that time included in Exhibit #1 in this Exhibit?

A. No, sir, nothing to do with it.

MR. ABRAMS: I will explain, Doctor, this new County was formed in 1907.

Cross-examination.

MR. HUDSON: Q. Mr. Cockshutt, you lived in Brevard County long before there was any railroads built in there, did you not?

A. Yes, sir.

Q. You remember when the East Coast Railroad was put through, the main line?

A. I remember but I don't remember the date.

Q. I don't mean the exact time but you remember the circumstances?

A. Yes, sir.

Q. Now, how about the market value of these lands you are testifying about, at the time the East Coast

Railway acquired its right of way, what was its value then?

MR. ABRAMS: We object to what the value was when there was no railroad there; what we are investigating is the value at the present time.

THE COURT: Well, I will not rule that out.

Q. Now, about the market value of these lands when the railroad acquired them, do you know?

A. I have no recollection that far back.

Q. Well, is it not a fact that those lands where the East Coast line runs of very much less market value at that time than they were in 1907?

A. As a whole I should judge they were.

Q. You are not able to express an opinion as to how much less?

A. No, I could not.

Q. Your home is nearer to the Sanford branch than it is to the main line?

A. Yes, sir.

Q. And the Sanford branch was built considerably before the main line of the East Coast?

A. Yes, sir.

Q. So that at the time the main line of the East Coast was built values had been enhanced somewhat by the building of the Sanford line?

A. Yes, values went up on account of the building of the J. T. & K. W.

Q. At that time there was a J. T. & K. W. that made connection which made connections with the Indian River Steamboat Line, that was the only means of transportation south on the east coast?

A. That was all.

Q. Now, take those lands which you say had no values in 1907, had they any market value at the time the railroad was built, the main line?

A. I don't remember of saying anything of any lands that did not have any market value.

Q. You said there were such lands selling for one dollar and twenty-five cents an acre which in 1907 had no market value at all?

A. Certainly I said that but one dollar and a quarter is some value.

Q. Well, take those lands now, at the time the railroad was built, had they no market value at that time?

A. No, sir.

THE COURT: Are the values set forth in your report a fair estimate in your opinion of the values of the property at the time that report was made?

A. They are made under oath.

THE COURT: How do they compare, how do they compare now with the values set forth in that report?

A. I think they are far below what it ought to be.

Q. That is to say that the values of today are very much in excess of the values that appear in the report?

A. Yes, sir.

THE COURT: The aggregate of the value appearing in your report here are very much less than the present aggregate values?

A. Yes, sir.

(That's all.)

MR. ESTERLINE: In the event that we should want to move to strike out the evidence, if it ought to be done by written motion before the Court we assume on final hearing, it should be understood we desire to strike out the evidence, the whole of it; that could be brought before the Court on final hearing—

THE COURT: Oh, yes, I don't rule finally on any matter.

MR. ESTERLINE: All I want understood is when this record is made up and returned to the Court we should file a motion to strike out these exhibits and the testimony of the witnesses that it be understood that counsel is not taken by surprise if that matter ought to be heard.

(Witness excused.)

Thereupon the Complainant to further maintain the issues upon its part produced and caused to be sworn as a witness one Richard W. Goode, who testified as follows:

RICHARD W. GOODE.

Direct examination.

MR. ABRAMS: Q. What is your name?
A. Richard W. Goode.
Q. Where do you live?
A. Melbourne, Florida.
Q. How long have you lived there Mr. Goode?
A. About 33 or 34 years.
Q. Did you live there in 1907?
A. Yes, sir.
Q. What is your business or occupation?
A. Well, at the present time and for some time before that I have been in the real estate business.
Q. Were you in the real estate business in 1907?
A. Yes, sir.
Q. Did you make an estimate of the values of the lands of the right of way for the Florida East Coast Railroad in 1907?
A. Yes, sir.
Q. In what county?
Q. In Brevard County from the south line of—from Pineda to the south line of the County, and then it was the Sebastian River.
Q. Is this a copy of your report?
A. This is a copy, yes, sir.
Q. What knowledge have you of the values of real estate in that territory, Mr. Goode?
A. Well, by buying and selling and by attending sales.
Q. For yourself or others?
A. For others as well as myself. I have a little of my own and a good many others—but mostly others.

Q. Well, give your aggregate values of lands used and right of way of the railroad at that time?

MR. NEEDHAM: This statement is made up a little different from the former one; it does not give the description or the character of the land through which it passes; it does not give any acreage at all.

A. In some places I think it gives the acreage.

MR. NEEDHAM: It does not give the acreage nor the character of the land, it is a different exhibit from the one that was put in.

THE COURT: This is Exhibit No. 2, is it?

MR. ABRAMS: Exhibit number two, yes, sir.

THE COURT: Q. Well, then you want to ask him what is shown by Exhibit No. 2.

MR. ABRAMS: What is shown by that paper?

A. It shows the value of the property at that time and also before that time and gives the price here at which that land was valued at and had been for some three or four years. For some reason there was no movement in the value of property at that particular time to amount to anything and this was based on what that land would cost if the railroad passed through.

THE COURT: If what, the railroad right of way?

A. That is right.

Q. Between what points?

A. Between Pineda and the Sebastian River.

Q. In what County?

A. In Brevard County.

MR. NEEDHAM: Now the objection, if your Honor please, to this, there is nothing upon this statement to show the amount of land that was taken by the railroad company; in the other case in Exhibit No. 1, the acreage of the railroad land was given, here there is simply a lot and block and a general description of the land with the value, not anything to identify the value of the lands taken by the railroad company out of these lots and blocks and whether he knows anything about it or can give us any information on the subject I do not know, but there ought to be

something to indicate or something in the testimony of the witness to show the amount of the lands and the values.

THE COURT: In other words, there was more presented in the report than there is in this.

MR. NEEDHAM: Yes, sir, this report as made up, I might say is quite complete, it gives the exact acreage, we can tell just how much, but there is nothing in this to indicate. He may have valued a whole—

THE COURT: You had better inquire of him then in some detail as to what the report shows.

MR. ABRAMS: I will state to you, we will put in other plats, showing every piece of land that we have—

THE COURT: You may ask him now what is covered by the report, what is shown by the report.

MR. ABRAMS: He may be able to testify from knowledge; these are town lots—

A. There is town lots.

THE COURT: Did you act in conjunction with the other parties?

A. No, sir.

Q. This was your own individual valuation?

A. Yes, sir.

Q. How many miles does this cover?

A. Well, fully twenty-five miles.

Q. How long were you occupied in examining this property?

A. A very few days at that particular time but I was so familiar with it, I had been up and down it a great many times that I knew a great many properties being sold and I knew exactly what the value was at that time.

Q. And in the report which you have in your hand you have tabulated the result of your examination or of your previous knowledge of the values?

A. Yes, sir.

Q. As I understand it, you set forth in different columns a statement suggestive of the lands and the value of it?

A. Yes, sir.

Q. As you considered it at that time?

A. Yes, sir.

MR. NEEDHAM: Q. Did you have a map of the right of way at that time?

A. I think I did, yes, sir.

Q. Have you it here?

A. No, sir, I haven't it here with me.

THE COURT: And in this report you specified the lot number and the block number in each locality and designated the different pieces?

A. Yes, sir.

Q. And the valuation which you put upon each one of those pieces?

A. Yes, sir.

Q. That covers over twenty odd miles?

A. Yes, sir, the acres, some, of course, you will notice, is acreage.

Q. Some of it you have estimated acreage?

A. Yes, sir.

MR. NEEDHAM: Q. Have you the plat that he used?

MR. ABRAMS: A. I don't know that I can get at it, it is among the papers.

MR. ABRAMS: Q. Are you personally familiar with all that land you valued?

A. Yes, sir.

Q. How many years' knowledge have you of that land?

A. 30 years.

Q. All of that territory you surveyed?

A. All of that territory I surveyed, every bit of it.

Q. Is it not a fact, Mr. Goode, that that particular territory was your particular theme of real estate operations?

MR. ESTERLINE: I object to that as leading and move to strike it.

THE COURT: That is what I understood from him.

MR. ABRAMS: I just wanted to show his peculiar knowledge of that territory.

Q. Were you an employee of the East Coast Railroad at that time?

A. No, sir.
Q. Are you now?
A. No, sir.
Q. Have you any interest in this matter?
A. Not at all, no, sir.
Q. Now, go on and state to the Court how you arrived at your values?
A. I have been in the habit of selling these lands along the railroad, where the railroad comes along that territory and it runs toward the Indian River and is a part of the property that has been settled up a good many years; that is only property there was any improvement, in buying and selling of that property. The property lying back from the railroad it is only just lately that it has been put on the market at all. Now these lands are all high, dry lands, and there is a great deal of it under cultivation and the railroad passes through lots of these places and naturally taking from that I know what the property is actually worth and could be sold for. There was no guess work about that.
Q. And then you made your estimates from what the land was actually selling for at the time?
A. Yes, sir.
Q. Now, Mr. Goode, it included that territory from—
A. From Eau Gallie to Melbourne.
Q. Those are the two towns?
A. Yes, sir.
Q. Now, in your estimate, can you state approximately what the size of these lots are, this lot eleven and lot twelve in block twelve?
A. The plat would show the size of the lot. The lots are I think 50 feet deep to a 125 and 175 feet deep and there are a great many lots 56 feet wide but it depends on the different blocks, all the lots in this block would be all the exact size perhaps, while the lots in the next block would be different sizes; it seems that they made these lots to fit into the survey that they made.

Q. In making these estimates or valuation did you consider the values of any buildings?

A. No, sir, nothing said about the buildings.

Q. Nothing but the vacant lands?

A. Nothing said about the buildings, no, sir.

Q. Were you personally familiar with these different lots in these different blocks?

A. Yes, sir, I sold lots in the different blocks at different times, and I know just what the next one would sell for and was held at.

Q. Have you ever made an estimate of the aggregate valuation have you got it?

A. I don't know as I have it; I made one I know, I made a memorandum just before I came from home.

MR. ABRAMS: I offer this in evidence as Exhibit No. 2. The valuation of the lands and the railroad right of way from Pineda—

MR. NEEDHAM: Now, if your Honor please, I want to object to this exhibit as not revealing the extent of the land that was taken by the railroad Company or the amount occupied by its right of way and also to the testimony of the witness as it does not show how he arrived at the land that was occupied by the railway; he is not a surveyor, he did not make any survey of the land, it gives no accurate description of it except the section in which it is located and in places he states so many acres, but it is not a statement that can be checked up and we need a description of the right of way as the other gave it.

THE COURT: Well, as I said a moment ago, it is perhaps not the same particularity or at least some of the particularities of the report of the former witnesses but it does not seem to me that this disqualifies it. He has testified that this is an average of that estimate of that property which is here specified.

MR. NEEDHAM: I submit, your Honor, that the witness, in order to testify as to the total valuation, not as to the valuation of particular acres, but as to total valuation, must show that he knew the amount

of land that was occupied by the railroad, that he was testifying about some—

THE COURT: Wouldn't it be testimony if he did that upon inspection; just ask the witness that question, just ask the question "In making this inspection of the quantity of land, did you take in each instance—

A. In this particular case I took the width, the length of the right of way through each section, sometimes only in part of a section, its cuts across a corner for instance. I took an estimate of that particular piece in that particular section or quarter section and knowing what there would be in that particular sized piece and I fixed my valuation as to that particular piece.

THE COURT: You say that you valued the land that was actually occupied?

A. For the right of way.

Q. For the right of way of the railroad?

A. Yes, sir.

Q. Based in some instances also on the pieces of lots that was cut off by the railroad, did you do that?

A. Well, I think those represented here was the actual width of the right of way but these lots in the town which they owned, which they sometimes used for that purpose, there is no acreage given to that; they are marked down lot and block but I think the estimate of the amount of land running through that territory is given by the acre whether there was one acre or nine acres. I think nine acres is the largest place in one section.

THE COURT: Q. These lots and blocks are where the right of way goes through some town?

A. Yes, sir.

Q. Those town lots have uniform sizes?

A. Yes, sir, all uniform size.

Q. What is the size of those lots as a rule?

A. The average size is from fifty to sixty feet front by one hundred and twenty to one hundred and seventy-five feet, a little difference in value according to location.

Q. When you indicate there in your report lot so and so, block so and so, you referred to town lots?

A. Yes, sir, I will state that we have a plat of the town of Melbourne and on the plat of Melbourne is shown every piece of land used for railroad purposes identical with this.

THE COURT: I see nothing in this objection as to this report.

MR. ESTERLINE: I want to ask one or two questions if I may.

THE COURT: Proceed.

Cross-examination.

MR. ESTERLINE: Q. Mr. Goode, how large a place is this Melbourne?

A. About four hundred inhabitants and in the winter time it runs a great deal more.

Q. You have lived there how long?

A. Thirty-five years.

Q. Thirty-five years in Melbourne?

A. Yes, sir.

Q. You know every lot and street and corner in that town? And have known it for a long while?

A. Yes, sir, I think I do.

Q. You made this estimate for the railroad company?

A. Yes, sir.

Q. And was employed by it to make the estimate?

A. Yes, sir.

Q. And paid for by it to make the estimate?

A. Yes, sir.

Q. I will ask you about this lot eleven in Block twelve, $100.00, how do you arrive at that $100.00?

A. Well, because if you wanted to buy it you would have to pay $100.00 for it.

Q. You say that is used for railroad purposes?

A. That is the valuation put upon it for railroad purposes.

Q. I would not want to buy it for railroad pur-

poses, how do you arrive at your valuation for railroad purposes?

A. I guess I will have to qualify a little; all these lots are not used for railroad purposes but they belong to the railroad Company and they must have that—

Q. That is railroad property?

A. They must have the same value belonging to them as if they belonged to individuals.

MR. ABRAMS: Pardon me, you are seeking to raise questions which are misleading. We furnished him a list of the land owned by the railroad company and held by the railroad for its purposes or its business.

MR. ESTERLINE: Q. Did you understand the question; what I want to know is, you are not a railroad man, you have nothing to do with railroad business, how do you arrive at that $100 for railroad purposes?

MR. ABRAMS: I object to that, to that construction, that never was intended and misleading the witness.

THE COURT: When you speak of that property being worth $100 for railroad purposes?

A. Then I will leave out the railroad purposes, I'll say it was railroad property and selling for $100, that is what I mean by it; I don't mean that they were making any particular use of it then but it was —

Q. Well, you made up this whole report here on the valuation when the property is used for railroad purposes?

A. Well, I don't know whether that would be exactly right to say for railroad purposes.

Q. Then this report is not correct?

A. Yes, sir.

MR. ABRAMS: We object to that statement; counsel is endeavoring to mislead this witness about a general construction and besides which you have taken the witness over my objection; I've not finished examining him. Now, let me ask the question.

if it was not used for railroad purposes what would the value be and you will see exactly what the words "railroad purposes" mean in that report.

THE COURT: He has explained that.

MR. NEEDHAM: I think your Honor, we are entitled to know how much of this property is owned by the railroad company but not in actual use for railroad purposes because in making valuations it must be confined, of course, where physical examination is concerned, to the land which is owned for railroad purposes and if they had purchased with the intention of—

MR. ABRAMS: We will connect it all up, we will show that every lot—

MR. ESTERLINE: Q. Then this report, Mr. Goode, you would not attempt to say that this property is used for railroad purposes, you would rather that would be stricken out?

A. Allow me to make a little explanation because, perhaps, I could make it plain. In this report I stated the right of way if you will notice at the head of it, that means the right of way they have used there for the railroad and its protection on each side of the road and I valued it by the aggregate. I think you will find that in my report, it should be there and I put it down by acreage. Now, you will see there is no outside property given in as belonging to the railroad company, property in large acreages, forties or anything of that kind, but these particular town lots belong to the railroad company and I was figuring them at just what they would be worth if sold to any person but, of course, the railroad don't travel over all of them, they go through them.

Q. Some of them some distance from the railroad?

A. No, sir, none lies very far.

Q. Well, you see Melbourne with the amount you have here; are you familiar with Lot 11, Block 12?

A. Yes, sir. that it outside of the town of Melbourne.

Q. These lots here, Lot 11, Block "F," you have valued that at $100?

A. Yes, sir.

Q. Does the railroad run through that lot?

A. No, sir, the railroad does not run through that lot.

Q. How far from the railroad is that lot?

A. I suppose it would be a hundred and fifty feet.

Q. It is not used for any railroad purposes then, in any respect?

A. No, sir.

Q. What is on it?

A. Just natural growth.

Q. There is no building?

A. No, sir. Stands there vacant, now.

Q. Lot 13, 14, Block 12, listed at $100. Are you familiar now with those lots?

A. Are they in Melbourne?

Q. I don't know, I am asking you?

A. Those are in the town of Melbourne, right along there, and form part of the right of way.

Q. You have those at $300 each?

A. Yes, sir.

Q. Now, is that $300 based on their use for railroad purposes?

A. They would sell for $300 apiece. The railroad uses those lots if they have need for them in their business. The right of way extends through town.

Q. The whole of these lots?

A. Yes, sir.

Q. Now, what I want to know, Mr. Goode, is your method of calculating the value of the $100 which you say is the value of some of these lots and is some distance off, take these two lots, 13 and 14, $300, are they along the railroad?

A. Yes, sir, they are close to the road.

Q. Now, did you use any different method in arriving at the valuation?

A. Just what it would sell for. You can sell those lots for that price, that is the way I get at the value

of all these lots you see down here in these different blocks here.

Q. Now, take Lot 8, of Block 21, $100, where is that lot?

A. That has a building on it.

Q. The railroad company owns the building on it?

A. Yes, sir, have their agent's building on that lot.

Q. Now, will you point out from that list which you have there which lots are on the right of way and which are not?

A. They are on the edge of the right of way, on the edge to the right of way and went down one of our streets. We then sold them a tier of lots all along here (indicating) which would be for business purposes, if it was not used for railroad purposes.

Q. What use does the railroad company make of their vacant lots?

MR. ABRAMS: Now, I object because what uses the railroad company have for a tract of land is for a railroad man alone to testify to. The railroad company can put any kind of an extra structure on it for railroad purposes, it might become valuable to put warehouses on or such as that. A railroad man alone is the one to advise this Court on that.

THE COURT: That may all be very true, but at the same time I think it is legitimate cross-examination to ask these questions. It ought to be limited to the present use, if any, made by the railroad.

Q. What use does the railroad company make of those?

A. They hold them open for the right of way to come, to put their freight houses and passenger depots and such as that.

Q. They are holding them open.

A. They ain't no buildings on some of them; there is buildings on the ones along the railroad track.

Q. But they haven't any great terminal or any great station or anything of that kind, they are just holding them?

A. No, sir, they are using them for vehicles to come over to get to the depot.

THE COURT: The only question is what use is now being made of these lots by the railroad company?

A. Can I answer that question?

MR. ESTERLINE: Yes, I don't want to interrupt you.

THE COURT: What use is now being made by the company of these lots?

A. It is to allow vehicles to get to and from the depots, the freight and passenger depots because if they didn't have them they couldn't get to it, if they didn't have these lots.

THE COURT: That is to say, people drive over these lots.

A. Yes, sir, that is a paved street now.

Q. Now, Mr. Goode, how many blocks in the city, what do you call it, is it a city or town?

A. Why, we call it a town.

Q. All right, how many blocks?

A. I think we have forty-eight.

Q. Now, you have forty-eight blocks, how many of those blocks are within the part of the city on which there are buildings and inhabited?

A. Well, they are all; it is very small territory, those lots are.

Q. Forty-eight blocks?

A. Yes, sir.

Q. How many lots do those make?

A. I think it runs about sixteen lots to the block.

Q. Now, how many of those lots do you think, have you figured up, I notice you have three and a half acres in lot 2, section 2, which is in the City of Melbourne or the town of Melbourne.

A. Yes, held for railroad purposes.

Q. For railroad purposes?

A. Yes, sir, that is a particular piece that was to give them a right of way that was necessary for them to buy that piece of land and of course they figured in a certain acreage and the railroad passes through a part of it and then in time they opened

clean up to it; it is about 100 feet wide and a part of it is covered by a bridge up at the north end.

Q. How much now, I can make it much easier if you will answer my questions; how much of this property described as in Melbourne, Brevard County, Florida, how much of that property, how much of the land, of the property, within the City of Melbourne, does that represent, would you say?

A. Until you come down to here (indicating) in the town limits, there is their property and their section houses on it.

Q. Oh, no, how much, what proportion of the property within the town of Melbourne does that represent?

A. I might also explain it in this way: this line is the incorporated limits (indicating) this is also in the town of Melbourne and this is the section houses and the section foreman lives on it, but this over the line of the incorporated piece is only a very small piece, that is incorporated. All these lots down here to the dotted line, the other piece of property is known to be in Melbourne and we call this Melbourne down in here (indicating).

Q. Now, are you able to state in a general way without being specific what proportion of the property described on the first page of this memorandum compares to the property in the town of Melbourne?

THE COURT: Q. That is to say, how much of the property in the town of Melbourne is owned by the railroad?

A. Very little sir, very little, indeed; it is a very small portion of the town of Melbourne.

MR. ESTERLINE: Q. What did you mean here by this statement "Florida East Coast Railroad and used for railroad purposes in Melbourne"?

A. Well, I mean this, as I understand it, that is what I say and I think that would be the same construction that would be put on it, that they simply belonged to and are used by them for their private use at times.

Q. As a matter of fact, they are not using a portion of that property?

A. I think they are using every bit of it. I think if you were to go out—

Q. No, you see I can't go there, I don't live there. You say they are not using Lot 11, Block "F"?

A. I think if you went out—In Block "F," they are not using that—it is not necessary for them to use that.

Q. Lots 13 and 14, Block 12, $300. That is on the other side of the track, they are not using that?

A. I guess they are.

Q. Isn't there any way to get to their station except on Lots 13 and 14?

A. No, sir.

Q. Then Lots 15 and 16, where is that, on the other side?

A. Yes, sir.

Q. Lots 15 and 16, Block 19, $500; is that the same?

A. Yes, sir.

Q. Lot 8, Block 21, is that the same?

A. Yes, sir.

Q. Lots 7 and 8, Block 28, $250; is that the same?

A. Yes, sir.

Q. Does the railroad run through the center of the town or one side?

A. You might say through the center of the town.

Q. What is the distance across town?

A. Well, our town is about three-quarters of a mile long. Our town is three-quarters of a mile wide by possibly a fraction over a mile in depth.

Q. Now, take it on down here, Lot 4, Block 29, $200, that is occupied, how is that occupied?

A. For the same purpose.

Q. For what purpose?

A. You can't get to the track without passing over it, that is a part of the right of way and track to do their business over.

Q. Now take this row of lots, 3, 5, 7, 9, 11, 13,

Block 42; $50 each; lots 2, section 2, Township 28, $875 each, where are they?

A. No, sir, that is a part of this piece of land over here.

Q. Oh, that is the whole of it?

A. Yes, sir.

Q. Now, they require that to get to their station and tracks?

A. No, they don't require that particular piece?

Q. What do they use that for?

A. They use that part of the right of way, the end of the freight—the end of the bridge, that bridge that goes across the creek, that adjoins that property.

Q. How wide is the right of way through Melbourne?

A. Well, it would vary, a little over 100 feet wide.

Q. Now here is the west 10 acres of the E. 25 acres of the northwest quarter of the northwest quarter of section 2, for section houses and railroad purposes, 10 acres, $2,000; for what purpose does the railroad use the 10 acres at Melbourne?

A. Well, I say it is all occupied for the simple reason that they wouldn't dispose of any of it, they need it, they have their purposes, they have ties on it, and different things on it, railroad ties and railroad iron and such things as that, little hand cars and it is occupied in that particular way.

Q. All over the ten acres?

A. Oh, I wouldn't say on each particular corner but they couldn't get along with any less than that.

Q. Now lots 180 by 120 and lot 100 by 200 in those sections, how many acres will those total, Mr. Goode; you are engaged in the real estate business, just make an estimate of the whole things, how many acres it is?

A. Thirty acres, about.

Q. And the railroad occupies the whole of those thirty acres for its purposes there in the town of Mel-

bourne, a place of 400 inhabitants, that is what you want us to understand?

A. Yes, sir, that is what I would like to have you understand if I could get it so you could get it straight.

Q. Now, how many buildings has the railroad company there?

A. They have a passenger station and—

Q. How big is that?

A. It is perhaps eighty feet long by perhaps thirty odd feet wide.

Q. That is the main building?

A. That is the main building and then there is the freight attached.

Q. How big is that?

A. Well, that would be about twenty by forty.

Q. How far apart are they?

A. Well, it is right along the track but the passenger building or depot occupies one building and the freight depot occupies one.

Q. Have they any other buildings there?

A. Then is where the south end of the bridge starts and then they start in with the section houses, the houses their men live in and where they place their stock, where they put their railroad iron and ties.

Q. How many men have they there?

A. Perhaps, on an average of about ten men, I think.

Q. What do they live in?

A. These dwellings.

THE COURT: You have gotten quite away from the cross-examination, you were cross-examining him on the report.

MR. ESTERLINE: I would like to test this witness' familiarity with these other lots and how much of them is used for railroad purposes. If they turn out to be as well occupied as all these others, I think we ought to know it.

MR. ABRAMS: We propose to show every bit of that land is used by the railroad and being used by it.

This man is simply employed to give the valuation; we propose to connect it up by showing that every bit of land that he has valued is used exclusively by the railroad for its corporate purposes.

THE COURT: Have you any further questions?

MR. ESTERLINE: I don't want to let this report go in; I understand this is to be offered in evidence; we certainly object.

MR. ABRAMS: I offer the exhibit as a matter of valuation and nothing more. I will strike out that word for railroad purposes.

MR. ESTERLINE: We understand it goes in under the objection if they do not follow this up by identifying the whole property as used for railroad purposes, then, of course, this exhibit is subject to a motion to strike out.

Examination by MR. ABRAMS:

Q. When I put the last question and stated the tabulation of the whole thing so as to give the estimated aggregate?

A. Yes, sir.

Q. Now state what was the aggregate value of all these properties appraised by you?

MR. ESTERLINE: We object to that.

THE COURT: Objection overruled, exception noted.

A. My valuation of this railroad property was $67,740.00 at that particular time.

THE COURT: Q. That was in 1907?

A. Yes, sir.

Q. Between the points which you have specified?

A. Yes, sir.

MR. ABRAMS: Q. In that territory?

A. Yes, sir.

Q. Since then has there been any decline or increase in the value?

A. There has been some increase.

Q. About what percentage of increase would you consider along that territory?

A. I consider it has increased ten per cent, sir.

Q. You think that is a reasonable increase?

A. Yes, sir, I do. It has increased ten per cent in that territory from one end to the other.

Q. At the present time, then, you think it would be valued at ten per cent more than it was in 1907?

A. Yes, sir.

MR. ABRAMS: I move the Court to strike out the examination on the cross-examination made by the gentleman in regard to the use of these tracts for railroad purposes, because it was irrelevant, because the witness was not offered for that purpose or for any other purpose than to prove the values of lots and particular tracts of land.

THE COURT: I don't think we need to go into that because it is not competent, you are bound by what he said.

Cross-examination.

MR. NEEDHAM: Q. In arriving at the acreage of the right of way did you make the measurements yourself?

A. We have a plat filed on the records of Brevard County showing it at the different places, showing the width of the right of way and the different widths and we figured the acreage in that way.

Q. You computed that from the official map of record?

A. Yes, sir, I have one in my office and there is one also in Titusville.

Q. And that acreage appears in the report of the right of way?

A. I think it does in many cases, yes, sir. Wherever it is necessary I think it appears that way; certain sections, certain right of way and so much acreage in that particular right of way through that section that they passed through.

Q. Where a corner was cut off did you include the value of corner in your valuation?

A. No, sir, not the corner of the right of way at all, not in this right of way.

Q. Did you include any damage to the balance of the property?

A. None at all, no, sir.

Q. Did you examine the acreage, the actual acreage and values through the different sections and in arriving at your value how did you arrive at the value in any particular case?

A. For instance, the railroad comes through this particular section, about nine acres cut through here (indicating) connecting nine acres along the side of that and in that it is valued and is worth just as much as this; for instance, some of these places where they went through, went through orange groves, it would be worth one hundred dollars, and in other places where it went through unimproved land it would not be worth over $25 or $50. In that particular case I had to make—

Q. You took the valuation of equal quantity adjoining the right of way?

A. Where they were equal in quality, yes, sir.

Q. How did you arrive at those values, from sales or your personal estimate of the values?

A. No, mostly from sales and what it was selling for and what it was held at. I think it would have brought that amount of money if it was sold.

Q. Have there been many sales at this time?

A. Since that time there has been quite a few. Of course, there were sales made all along before that but not as numerous.

Q. There were sales made since?

A. Oh, my, yes. Some places had a very much higher value but I said the increase in valuation as a whole is what I stated, that it was fully ten per cent. I did not make any particular valuation on any one little piece because some was so much higher than the others that it would be necessary to do the whole thing over and I had no time to do that.

Q. How many miles did you cover, miles of railway I mean?

A. It would run close to 30 miles.
Q. Did you go over it all?
A. Yes, sir, many times.
Q. And then made your estimate from the map, from the official map?
A. Yes, for the width of the right of way, yes.
(That's all.)

Cross-examination.

MR. ESTERLINE: Q. When were you last at Pineda, Mr. Goode?
A. Well, day before yesterday.
Q. When before that?
A. Possibly ten days.
Q. You are frequently down there, are you?
A. Well, I can't say frequent but it is often.
Q. When you were there day before yesterday you simply stopped off on your way to the courthouse to testify?
A. I simply passed through the Pineda settlement.
Q. You stopped off?
A. No, I didn't stop off at all.
Q. Oh, well, when you say you were there day before yesterday you mean you came through?
A. Oh, I came through. I didn't quite understand the nature of the question. I supposed you asked me when I was there, like I had been in St. Augustine. I was in St. Augustine. I am here today. I was in Jacksonville yesterday and the day before and I passed through many of these little villages.
Q. When you were there for the purpose of estimating the values of real estate—you don't deal in Pineda lands, do you?
A. Very often, yes, sir, lands adjoining all up and down that coast.
Q. You say you were making this estimate when you were down there?
A. When I made that estimate I was there in 1907.

Q. You haven't been there since 1907 since you came through on the train?

A. No, sir, that is away south of where I live.

Q. When were you there last?

A. I think it was in December.

Q. Last December?

A. Yes, sir.

Q. When were you in Sebastian?

A. Oh, I thought you said that before, it was in December when I was in December.

Q. Now what kind of lands do you deal in mostly?

A. Anything.

Cross-examination.

MR. HUDSON: Q. Mr. Goode you lived in Melbourne before the road was built there?

A. Yes, sir.

Q. What can you say of the value of the property that was acquired by the East Coast Railway as a right of way, how does it compare with the values you put on it in 1907?

A. I don't know that there was any difference at all.

Q. Were they worth just as much?

A. Worth just as much, in fact, I sold property at $100 an acre that I couldn't get $10 an acre when the—after the railroad went in in places, it was a difference.

Q. Why was there no difference in Melbourne?

A. Well, I think it was one of those cases where it seemed to be stagnation of business.

Q. When did the railroad reach Melbourne?

A. I think about '93, somewheres about along 1893, I believe it was.

Q. Well, about the lands lying north and south of Melbourne, was their amount of value as great as when you made the estimate?

A. Yes, I think some was a little higher than it was in 1907.

Q. At the time the railroad was built?

A. Yes, sir, just about the time the railroad was built, the property was up and had a good demand for it.

Q. How about the values down towards the Sebastian River?

A. Well, there were fully as high as they were in 1907.

Q. Is it not a fact, Mr. Goode, that a part of the right of way of the railroad along there was donated to the railroad company?

A. Well, it was not, I sold it to the railroad company myself.

Q. Now, what proportion of the right of way along there was bought would you say and what proportion was donated?

MR. ABRAMS: I object to that, it is immaterial.

A. All I know is what I sold them, I know they bought outside of that but I don't know how much.

Q. How much was that?

A. It was possibly some few miles, three or four miles.

Q. Don't you know as a matter of fact that there was considerable of the right of way donated to the railroad company?

A. Well, it might have been. I gave the railroad company 100 acres in other places but it had nothing to do with these values; I am speaking of the values on the lands that the road passed through, I don't know anything about outside values.

Q. I am trying to ascertain whether or not the right of way in this territory you are testifying about was not in some cases donated to the company?

A. I don't know of any but likely it was.

Q. You don't know of that?

A. I don't know of any.

Q. But you did sell them some?

A. Yes, sir.

Q. That amounted to about how much, now?

A. Well, I wouldn't like to make a positive statement.

Q. Well, approximately?

A. Well, state it at the rate of about $75 an acre. But I don't remember exactly.

Q. Well, for how many miles?

A. Well, I would have to qualify by saying one mile.

Thereupon at two-thirty o'clock, P. M., the hearing was convened, at the same place. Present, the same parties.

Thereupon the complainant to further maintain the issue upon its part produced and caused to be sworn as a witness one Colonel R. H. Elliott, who testified as follows:

COLONEL R. H. ELLIOTT.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. R. H. Elliot.

Q. Where do you reside?

A. Birmingham, Alabama.

Q. What is your business or profession?

A. Civil engineer.

Q. Are you connected with any railroad?

A. Not at present, consulting engineer only.

Q. Have you been connected with any railroad?

A. I have been engineer of the Central and Southern Florida and Gulf, now the Atlantic Coast Line, Georgia Western, now the Southern, Illinois Central, Missouri Pacific, Kansas, Fredericksburg and Memphis, the old Frisco system, and the Louisville and Nashville.

Q. How many years have you been engaged in railroad work?

A. Since 1867, sir.

Q. Are you familiar with the price and cost of railroad construction?

A. Yes, sir.

Q. Colonel, did you make, in 1907, an estimate of what it would then cost to rebuild the East Coast Railroad from Jacksonville to Homestead, with its branches and main line?

A. In 1907? Yes, sir.

Q. Did anybody make that estimate with you?

A. Mr. Huger made it also.

Q. How did you make your estimates?

A. Well, we had all the reports of the Company before us, profiles and estimates of construction on which they paid for the work. We examined the road personally ourselves by traveling over it in a train that was furnished us, and examined such points as we chose to stop at, and on some of the branches and a portion of the old road where they had no profiles we made such measurements as we thought were necessary, and based our estimates on those measurements.

Q. And did you ascertain or did you find out the cost of labor and material, etc., at that time?

A. Yes.

Q. As a railroad engineer how much construction work have you had?

A. Oh, I don't recollect, sir. I suppose a good many hundred miles, six or eight I suppose, six hundred miles certainly. I have had under my immediate supervision, and a good deal more of which I have been consulting engineer.

Q. Omitting the estimates of the cost of buildings which appear in your report, omitting that—

I will state to the Court I wish to omit it because at the previous hearing the witness said they were not a part of the structures or buildings.

THE COURT: You made the report, as I understand it?

A. Yes, sir.

Q. Embodied your examinations in a report to the Company?

A. Yes, sir. Well, I think it was to the Trust Company, was it not, sir?

Q. And your report is here present in court?

A. Yes, sir.

Q. Look at that report, Colonel, and see if that is the report which you and Major Huger made to me as solicitor for the railroad?

A. Yes, sir, I have examined the report.

Q. Now, from Jacksonville to Homestead, what was your estimate of the cost of building the railroad, grading, ties, laying rail, etc., at that time?

A. $5,527,600.82.

Q. Will you state what that covered?

A. That was the construction of the line, sir. That was the engineering department, grading, trestle, iron bridges, and that sort of thing.

Q. Now, what else did you—

A. We took all the branches then in detail. Give each of those?

Q. Yes, sir.

A. Mayport branch, twenty-four and eight-tenths mile, $254,439.61; of the Palatka branch, 1.57 miles, $50,796.68; San Mateo branch, 2.7 miles, $20,270.39; Ormond branch, 1.75 miles, $47,789.38; New Smyrna branch, 26.80 miles, $207,595.49; Titusville branch, 35.25 miles; $314,828.30; Palm Beach, $83,606.36; coast of main line and branches, you want that? $6,506,729.09. Now, there was to that added—

Q. That is the summary?

A. No, sir; to that was added engineering and supervision three and one-half per cent. To that was added for supervision three and one-half per cent of the total cost, which amounted to $227,735.44. Also legal expenses one-third of the engineering and construction, $75,911.80, total, $6,810,374.33. You wish me to give equipment?

Q. Yes, give everything that covers?

A. Equipment—

THE COURT: Q. Did you examine the equipment of the road?

A. I did not, sir.

Q. You did not?

A. No, sir; Mr. Huger did.

Q. Perhaps you better not testify to that, that is a matter of fact and not a matter of estimate.

MR. ABRAMS: Q. You did not examine the equipment yourself?

A. No, sir.

Q. Major Huger did?

A. I went over with him but not carefully at all, took no interest in the values and so forth.

Q. Did you examine it so as to estimate the cost?

A. No, I could not estimate the equipment.

Q. Well, we will leave that out, I will put Major Huger on, he will testify to that. What else did you do in that?

A. Well, I did nothing else.

Q. Then your estimate—Major Huger did the balance?

A. Yes, sir.

Q. In making this estimate so far as you have gone, aggregating $6,810,314.33, did Major Huger assist in making those estimates?

A. Yes, sir; he went over the road with me.

Q. You say you went over the property in person?

A. Yes, sir.

THE COURT: That would be your estimated cost of the construction of the main line and the branches, main line extending from Jacksonville to Homestead?

MR. ABRAMS: Yes, sir.

Q. Can you recall what character of bridge there was at Fort Lauderdale when you examined it?

A. No, I don't recall it by the name, I do not recall the name.

Q. In making these estimates, did you take into consideration, did you find any modern steel bridges on that line?

A. Oh, yes, sir; we found some steel bridges.

Q. Where at?

A. That I can't recollect without reference to the list.

Q. Now, there was a bridge at Auburn, was there not?

A. I don't recollect the points, sir, that I saw them at. I recollect a large one at Jacksonville. I can not recollect the names, I recollect the bridges, but I don't recollect the names.

Q. You covered every item on that—

A. I would recall them if I went over them, and the location of the line, but I don't connect the name with the bridges now.

Q. Colonel, since you made that estimate, have you any reason to consider this excessive at this time?

A. No, sir.

Q. Do you know of any decrease or increase in the general cost?

A. I would not suppose there had been a decrease in anything. Although without knowing so, I would apprehend an increase in the cost of labor. I don't think steel rails have varied and I don't know, I am satisfied ties would not decrease. I think that in the grading, labor, of course, bears heavy upon it, and I would imagine that there would be some increase in the cost of labor, that is to say, judging from the district in which I live, where it has been for three or four years that they are at a premium.

Q. Upon what do you base your estimate of engineering and construction, three and one-half?

A. Well, I base that upon my experience of other roads. Now, the roads in heavy grading, of course, the percentage is greater. The engineering on mountainous districts is about seven per cent, five to seven per cent.

Q. Now, in regard to your estimate of legal expenses, one-third of engineering?

A. That is entirely arbitrary. I just recall on certain roads I paid so much for legal assistance, and I assumed it on this road.

Q. You consider that excessive?

A. No, sir; it is not excessive at all, sir.

Q. From your experience, could you have done it as low as one-third of the engineering?

A. I don't think so, sir, I don't recall any.

Q. These estimates cover, I think, every detail, from clearing and grading, do they not?

A. Yes, sir.

Q. Grading?

A. Yes, sir.

Q. Number of cubic yards?

A. So far as we could get them, yes, sir.

Q. Trestles and everything?

A. Yes, sir.

Q. Colonel, at the time you made this examination, what did you find the condition of the road?

A. Very fair condition, sir.

Q. Sir?

A. Very good condition, for any ballasted road, most of it.

Q. You found parts of it ballasted?

A. Some portion of it, yes, sir, we estimated that ballast.

Q. You say you did not examine and ascertain the value of the equipment; did you look at the equipment, and see its condition?

A. Yes, sir.

Q. What was its condition?

A. Very good.

Q. How did you find the road bed?

A. Very good condition. A great deal not ballasted, but the sand about which this country is boasted make a good road bed.

Q. You consider that estimate you made of $6,810,374 as a reasonable estimate?

A. Yes, sir; quite a reasonable estimate.

Q. You think it could have been built at that time for any less than your estimate?

A. No, sir; I thought it was a fair estimate of the cost.

MR. ABRAMS: I now offer this in evidence.

MR. ESTERLINE: We want to object to it, your Honor.

MR. NEEDHAM: Your Honor please, we have not seen this until it is presented here, and I want to raise an objection—

THE COURT: It is not offered yet, he has not proved it by the other witness.

MR. NEEDHAM: Oh, I understood he has offered it, is offering it now. But with reference to the objections we may have to this, I should want to ask Colonel Elliott a few questions as to the source of his information in reference to these quantities.

THE COURT: You better cross-examine him on that point now.

MR. NEEDHAM: Whether it was by personal examination and measurements or whether the measurements were taken from other sources, your Honor, I want to suggest with reference to the cross-examination upon the whole subject-matter, if we could pass that over until to-morrow and give us a chance this afternoon to go over it, I am sure it would save time without starting it now. Of course, if this had been presented to us before we might have been better prepared but I would like to ask Colonel Elliot a few questions with reference to the source of his information.

MR. NEEDHAM: Q. Colonel, how much time did you spend on the road?

A. We took a little over three weeks, sir, on the work.

Q. Going over the road all the time examining different parts of it?

A. No, sir; we were a good many days in office work on the matter.

Q. The three weeks covered the entire time that you spent?

A. Yes, sir.

Q. In making these estimates?

A. Something over three weeks, a few days.

Q. How much time did you spend upon the road?
A. I suppose a week or ten days.
Q. Making a personal examination?
A. Yes, sir.
Q. You said you took some measurements?
A. Yes, sir.
Q. Can you tell how much that represents of the entire main line?

A. Well, I don't recall the portions in which we had the profiles, now, where we had the profiles, of course, I did not make measurements except in this way. Certain increments of earth on a road that has been operated for a few years, vary a little, that is, outside of the original slope, the bank will work down so it will take a slope from one and a half to two or such a matter. Now, it was necessary to ascertain whether that had occurred on this road bed. We found in certain parts of the road that had not occurred, that the earth had stood still, that the old banks had maintained their slope. I recall that was south of here. In other sections the slope had flattened very much. Now they had widened out, of course, that slope came from the track, along the side of the ties, washed off. That had to be replaced, consequently the road bed would form a larger cross section than originally planned and built on. Now, we had to measure that, we had to get out and examine that and see what it was and then average it up. I based most of my calculations afterwards or most of it, with a slope of two to one of the banks, if they had been very high banks they would not have had that slope, they would have taken something less than that, but on the banks of this sandy soil it will take a slope of two to one, but many of the cases we found where they carried in a lot of sand, that place I remember was considerably south of here, some of those proved to be twenty-five or thirty feet wide. Now we excluded all over sixteen or eighteen feet as unnecessary width, they had used a great deal of t' at to put on other places of the road. We excluded

everything outside of sixteen or eighteen feet, possibly twenty feet, as unnecessary, but up to eighteen or twenty feet we allowed that as a road bed as it could not be avoided, it was a necessary increase of the road, and in the banks we also allowed increase as a necessary result that would have occurred in the use of the road for a few years. That would not appear in the original estimate. It would have appeared in a few years. Part of the road had not suffered in that way, parts of the road maintains its old bed. Now, where we have profiles of course it is a very easy matter. We also in one or two instances, certainly in one that I recall, took both methods. We took the profile we had and then I substituted my own estimate without looking at the profile or any reference to it to see whether the average estimate I would make based on the average would very materially differ from that made by the engineers on the construction of the road, which I did, and I found it did not differ two per cent. So I assume that my estimates were correct fairly so, where I had determined my own figures. In a country of this kind it is not difficult to do. If you have constructed road in a country you soon acquire the facts that any given section of country will return you a certain amount of earth to be moved off. In middle Georgia below Atlanta it will average twenty thousand yards to the mile, if you use one foot grade. If you go up in the region of Atlanta you will run thirty thousand, if you go down to south Georgia you will run ten and maybe go up to eleven or drop to nine. The result is, you can take a horse back ride and make a very close estimate. For instance, where I have been doing some work on the Missouri Pacific across Missouri, you can take your horse and ride twenty miles and make an estimate of what you have got to do, you would not miss it but very little. Now you can do that in this country. You know the average is about so much, you will know that average will not change until you

come into a section of a change, of which changes, the moment you come into it, you have got to adopt another measurement. A great many engineers, in fact it is the usual practice, when they make an estimate, to ride horseback and see what country the railroad is going through, and they will ride the country and make notes on it, and then they will make no note of the actual work they pass through, but they will say this is such and such a country of which I have built a road, and it averages so much, and then they will put down a certain estimate, and it comes pretty fairly correct. Now, you could not make a measurement of this road without the most elaborate surveys that would cost a great deal of money, and yet I know today you could take a great many engineers and run them over this road and give them a few days, and they will give you a pretty close estimate of the amount of earth necessary.

Q. This is comparatively level country to build roads through?

A. Yes, sir.

Q. Did you find very many deep cuts on the road anywhere between Jacksonville and Homestead?

A. Well, not very deep cuts. I think we found them about fifteen feet down near the banana section.

Q. Was that very extended?

A. No, sir.

Q. Was there more than one or two?

A. Oh yes, I think a good many, I think a couple of miles. Now, let me correct you, south of Homestead or when you get down beyond the sand region and get on to the coral rock, you have to pay very much higher prices for work, because you are working in rock.

Q. Where is that on the line between Jacksonville and Homestead?

A. This is this side of Homestead, a little this side of that, I don't recall.

Q. Could you tell how much?

A. I don't recall how much.

Q. Are there any places where there are very deep fills, where the banks are very high?

A. I don't recollect any, sir, except near a little river down towards Miami, and a long approach on piers.

Q. With a dirt approach?

A. Yes, sir; that is the only one that I recall.

Q. How high would that be, how much would that be filled up?

A. I don't recollect exactly, about twelve or fourteen feet.

Q. To what extent?

A. Oh, surely for a hundred feet.

Q. Aside from these cuts and fills that you have referred to, what would the bank be, speaking approximately, on the entire line?

A. Well, I could figure it out, but I think it would average about two and a half or three feet, average.

Q. Very small?

A. Yes, sir.

Q. And is there much of it that goes through wet, overflowed land?

A. Yes, sir; a good deal of it. By the way, there is some good cuts and fills on one of the branch lines that runs out.

Q. Do you recall which one?

A. No, sir; I do not.

Q. Coming to the water, how much of it was submerged?

A. Oh, I could not give you an estimate or percentage; a great deal.

Q. Was that filled simply by grading up or hauling in?

A. No, sir, wurrups evidently. You will see there is difficulty in this country which adds materially to the work. The material that you handle is very cheap material to handle, but the road bed being small the requirements per hundred feet is small.

When you try to clear that you will be impeded by roots and timber, especially in palmetto country. Now that clearing will cost you a good deal of money. After you have done your clearing you have very little use for earth, and after you excavate it fills with water immediately so you are between water and roots and that makes the cost higher than it would apparently be.

Q. Now, did you arrive at that condition from your own examination of the soil on the right of way, or from reports made with reference to the construction of this road?

A. Well, I have built roads right north of here, therefore I could say experience.

Q. Well, what do you mean when you say north of here?

A. Well, the road from Brunswick to Albany.

Q. Your estimate then of the banks and the filling is made up from an examination of the profiles?

A. Yes, sir.

Q. Confirmed by these measurements that you have referred to at different points?

A. Yes, sir.

Q. Now, with reference to the ties upon this line of road, what kind of ties?

A. Now, I think pine, sir, but my observations, personal observations, simply referred to the timber that I saw on the line, which would be entirely negative in its position. That is to say, there was no other timber visible from the road of my examination of the country that would supply the line with ties. That I was very much surprised to find. But the report as to the cost of ties and the handling of ties we had to get from others.

Q. From what source did you get that information?

A. We got that information I think from a contractor who supplied ties in one instance.

Q. On this road?

A. Yes, sir.

Q. What kind of ties are used?

A. They are usually yellow heart pine. Those that I saw were very good ties.

Q. How many to the mile?

A. I think they used about twenty-eight hundred and odd to the mile. It was a little more than two thousand and a little less than three thousand to the mile, and I think it was twenty-eight hundred and odd to the mile.

Q. Your estimate upon that was based upon the market price of ties at what time?

A. At the time we made the estimate, sir.

Q. At the time you made the estimate?

A. Yes, sir.

Q. And did you ascertain the prices at the time?

A. Yes, sir. We got the report I think in Jacksonville.

Q. With reference to the rails that are used on the road, what weight rail did you see?

A. They were various weights, they were not uniform.

Q. Did you estimate on a uniform rail, or did you take the rails as they are laid upon the road at the present time or at that time?

A. My impression is we took the rails as they were laid at the time.

Q. Where did you get that information?

A. I took a templet along in part of it, and the others I took the information.

Q. You did make some measurements yourself?

A. Oh yes, made some measurements.

Q. But your information generally was from the specifications of the road?

A. The reports of the Company and others by the section men, of the weight of the rails.

Q. Do you recall now the prevailing weight of the rail used on the main line?

A. No, sir; it ended right here, the large rail from above stopped right here.

Q. Do you remember—

A. And then it changed again, I think it changed four times if I am not mistaken.

Q. Do you remember the weight of the different rail?

A. No, sir.

Q. It is all stated here?

A. Yes, sir.

Q. As to the prices of the rails, is it the prices that were prevailing in 1907?

A. Yes, sir; we took the standard price, which I think at that time was twenty-eight dollars. I don't recall, but I think that was the price, and added on the freight and handling of the rail delivered at the point of handling, track-laying.

Q. In estimating the track-laying, what system of track-laying did you adopt?

A. Took nothing but the old system.

Q. By hand labor?

A. Yes, sir. It does not differ much, you know, sir.

Q. It depends on the road somewhat?

A. Very much on the road bed, but you will find that the old system costs very much less than the new system, when you get the new system worked up and get the road bed, you lose money.

Q. You believe in the good old things. Now, with reference to the other evidence given in the estimate of the specifications which appear here, you got your information with reference to quantities in substantially the same way that you got your information with reference to rails and ties, from the specifications used in the construction of the road, and confirmed them by some examination on different parts of the line?

A. Yes, sir.

Q. With reference to the spur tracks that are put out, could you say whether they were built of new rails or old?

A. No, sir; I couldn't tell from memory, but I

think you will find it stated in there, my recollection is we noted it there.

Q. Now, with reference to the trestles, and culverts, was there any very large trestles on this line?

A. Not many, sir, one at Jacksonville.

Q. Do you remember how long that was?

A. No, sir.

Q. Did you examine that?

A. The one across the St. Johns River, and then one further down are the two longest ones that I recollect, and then one more across a lake, I don't recollect the name, but the details of all that are given in the paper, sir.

Q. Now, in getting at the length and size of these trestles and the materials composing them, did you take the estimates and the specifications, or did you make personal examinations and measurements?

A. We made personal examinations of the trestles, and counted the vents, that gave us the length, that was corroborated by what we had gotten.

Q. But you had before you the specifications?

A. Yes, sir.

Q. And simply confirmed the correctness of them by your examinations?

A. Yes, sir.

Q. How about the culverts, are there any unusual culverts?

A. No, sir.

Q. They are usually over small streams?

A. Yes, sir. All small and open culverts, I counted those as well as I could, in addition to examining the profiles, I recollect keeping a list of all culverts and all road crossings and all signal posts, and all switch stands, and noted those as we passed them. Then I checked them with the reports of the road masters. Now, in that checking that way I don't think we missed any, but the probability is that there was an error made in estimating it. I mean to say if there was an error—

Q. That is to say, you might have overlooked some?

A. Yes, sir; might have overlooked.

Q. Now, with reference to bridges, are there any extended bridges or expensive bridges over this line?

A. Well, sir, this one at Jacksonville. Now, the cost of that bridge is largely in the foundation, of course, of which we had no way of ascertaining except on reports. There is an iron bridge below here which is quite long, but it is not necessarily a costly bridge.

Q. Is there another or any other bridges?

A. There were some steel bridges, but I do not recall them. They are enumerated there.

Q. How did you arrive at the material in it and the cost of it?

A. I simply took the railroad reports on that.

Q. You took the railroad reports entirely?

A. Yes, sir.

Q. In estimating the cost as represented by the railroad, did you take the cost of them at the time they were put up?

A. I had with me a list of the prices of the bridges at that time. For instance, the price of bridges is quite uniform. After you have a span of course you can tell the cost. The steel and such so much, and the erection. I tested all of them in that way. In fact, the larger ones I simply took the reports of the Company on that.

Q. And put in the estimate of the total cost of the bridge in each case?

A. Yes, sir.

Q. In estimating the smaller items, such as frogs and the connections and fastenings, etc., that you depended of course upon the specifications that were furnished you?

A. No, sir; I think I brought down a list from some company that furnished them material, my recollection is that we just transcribed their figures,

so much for a switch-stand and so much for frogs.

Q. Took it from their price list?

A. Some of it we did that way, some of it we did the other way.

Q. Now, in making the estimate in the way you have stated, the steel bridges and iron fastenings, etc., did you make any allowance for depreciation at all for use, or did you put in the cost original?

A. I put it in the cost as we found it.

Q. On the theory of reproduction new?

A. Reproduction new.

Q. This estimate of yours then is a cost—your estimate of the cost of reproducing the road new?

A. Yes, sir.

Q. This does not include as I understand it, the cost of the buildings, such as depots, etc.?

A. Yes, it includes it, but that is made by Major Huger.

Q. You did not make any estimate of the buildings?

A. No, sir, but to assist him.

Q. It does not include the right of way?

A. No, sir.

Q. Now, aside from the right of way and necessary lands for railroad facilities, it includes everything for a completed road ready for operation?

A. Yes, sir.

Q. And the equipment now represented by the equipment now owned by the railroad?

A. Not now. I don't know whether they have increased it very much since that time.

THE COURT: Is this estimate you have given of six million, eight hundred thousand, does that include the equipment?

A. No, sir.

Q. At what point does the road leave the main line and proceed along the Florida Keys?

A. A little south of Homestead.

Q. So that the estimate you have given extending from Jacksonville to Homestead, does not include

the projection of this road from there over the Florida Keys?

A. No, sir; not after it leaves the main line. This estimate is to the point as far as it remains on the main line.

MR. NEEDHAM: Q. Did you keep your notes of observations made at the time, that is, have you kept your notes?

A. Some of them I expect, sir.

Q. Of the observations you made?

A. Some of them I have kept, yes, sir.

Q. Some of them you have?

A. Yes, sir.

Q. You don't know whether you have them all or not?

A. No, sir.

Q. Could you make an examination and let us know later, you need not come here for that purpose but could you let us know whether you have the minutes you made at that time?

A. Yes, sir, I can look and see what I have among my papers.

Q. From whom did you receive the profiles and estimates of the cost of materials that went into the road?

A. We were given an office in the main building at this point, and called upon Mr. Goff the general superintendent at that time for all papers we required, and the auditor's department for everything we required there.

Q. Did you keep any list of the documents that were furnished you?

A. No, I don't recollect that we did.

Q. Do you recall the amount of ballasting used?

A. No, sir. I recall that it was ballasted from here to Jacksonville. I think most of the way, and also that there was some ballasting at the southern end near Miami.

Q. What kind of ballasting was used?

A. It was as I recollect it a sort of crushed stuff

that they get down here, I don't know what they call it.

Q. Do you know where it was obtained?

A. No, I do not.

Q. You do not recall how it was manufactured?

A. No, it seems to me we were taken to a quarry somewhere.

Q. Did you understand that it was crushed stone such as is used on the roads in the north?

A. No, sir; I don't recall that it was.

Q. Do you remember what it was?

A. No, sir, but my impression is it is coquina.

Q. How did you arrive at your estimate of the cost of the material used for surfacing?

A. I don't recall, probably by estimating its value per yard in getting it out, and then the usual values for handling and transportation and putting it down, which of course adds to it very much.

Q. In order to do that you would have to know then the material and the cost of producing that material ready for use?

A. Yes, sir.

Q. Have you any recollection upon that subject?

A. None at all, no, sir.

Q. Does this show it?

A. That shows its probable source and its cost.

Q. This was the cost then of reproduction in 1907?

A. Yes, sir; of the material of the road.

MR. NEEDHAM: If this is to be used, your Honor, we should expect of course that the same data which was furnished to this engineer would also be furnished to us or to experts that we put upon the line of road.

THE COURT: Well, are there any further questions?

MR. ESTERLINE: I understood we should have until to-morrow morning to investigate this report.

MR. NEEDHAM: My questions have been with reference to the admissibility of this.

THE COURT: This was not an expensive line to build?

A. No, sir.
Q. The construction was easy?
A. Very.
(Witness excused.)

Thereupon the complainant to further maintain the issues upon its part produced and caused to be sworn as a witness one F. K. Huger, who testified as follows:

F. K. HUGER.

Direct examination.

MR. ABRAMS: Q. What is your name?
A. F. K. Huger.
Q. Where do you reside?
A. I reside at present at Brunswick, Georgia.
Q. What is your occupation or profession?
A. I have been engaged in transportation, maintenance of way and operating departments of railway since 1866.
Q. What roads have you been connected with, Major, and what positions have you occupied on them?
A. I have been connected with the Atlantic Coast Line as freight and passenger conductor and superintendent, and with the Southern Railway, with the East Tennessee and Georgia, as Master of Transportation and Superintendent, with the Seaboard Air Line as Superintendent and General Superintendent.
Q. During these years of your active connection with railroads, have you become familiar with the cost and prices of railroad construction in Florida as well as other States?
A. With the cost of construction? In a general way, yes.
Q. In the matter of equipment for instance, have you become familiar with the cost of equipment?

A. Yes, sir; I was responsible for the purchase of cars and equipment, passenger equipment and freight equipment.

Q. Is it necessary for a railroad to have a large amount of machinery and tools on hand for its operation?

A. Necessarily so, based on its traffic.

Q. Has it not got to have a large amount of what is called stock, on hand for use on the line of the road?

A. Necessarily.

Q. What would that stock consist of, Major?

A. In the maintenance and way department, or in the transportation department?

Q. All over?

A. Well, it requires in the maintenance and way department rails and fastenings and cross ties, frogs, switches, signals, and in the operation department it requires cars, passenger and freight cars, baggage cars, express cars, and every class of cars necessary in the operation of a railroad, together with the necessary tools and machinery to maintain it.

Q. In July, 1907, did you, Major, assist Colonel Elliott, you and he go over this road?

A. We did, yes.

Q. Look at this and see if that is the report you made to me?

A. This particular report does not seem to have been signed, but as far as I can recollect, that seems to be the report we made. I assume that that is the report.

Q. Now, in regard to the valuations made, from the top of this line, down to legal expenses, aggregating $6,810,374.33, please to state whether or not you agreed with Colonel Elliot as to the then cost of reproducing the road?

A. I did. We naturally conferred in regard to these various items of cost, and in regard to the engineering accounts I deferred largely to his opinion, and where I found occasion to differ with him we dis-

cussed the question and reached a conclusion, but the final result was approved by me, concurring with Colonel Elliot in his estimates as to the production.

Q. Now, I find some items here of building, equipment, machinery, tools, stock on hand, which the Colonel says you made investigation upon?

A. I did.

Q. Give to the Reporter what your estimate was of the then value of the equipment in July, 1907?

A. The value of equipment was $2,556,087.09, the value of buildings $928,962.02, the value of machinery and tools $113,061.82, and stock on hand $756,820.85, gives the total cost as the result of our examination and report $11,165,306.05.

Q. Now, Major, at the time, when you testified in regard to this, I think you stated how you arrived at your estimate of the buildings, how did you arrive at your estimate of the buildings?

A. I arrived at the estimate of the buildings by reports made of the roadway department, which was furnished me, and by a personal examination of the buildings. I assumed that the contract prices as furnished me were correct, and I simply examined the buildings with a view to determining more properly as to the character of the work and nature of the construction, and the manner in which the buildings were maintained. Then I added to that cost for maintenance of buildings being in good condition. I added to the cost of those buildings the increased price of building material, with which I was familiar, and the increased cost of labor, which was about forty per cent, which I added to the buildings, and in this way I arrived at the estimate.

Q. I think you testified before that you were not a contractor or builder?

A. I never put up a building in my life except by contract. I have had a great many put up that way.

Q. Now, Major, in your thirty odd years or forty odd years' experience—

A. Not forty.

Q. Can you say whether or not this estimate of values was excessive or moderate?

A. Well, the estimate as made by me and by Colonel Elliot was based on what we conceived to be the values at that time the estimate was made, and those estimates were not excessive. We endeavored to reach a fair and reasonable basis, and I think we did.

Q. Since that time, since July, 1907, has the general price and values changed, so as to make this excessive at this time?

A. I think it would make that estimate considerably lower than would be the case to-day, for the reason that there has been undoubtedly an increase of cost in equipment, certainly in motive power and equipment. As to rails, there has been very little variation in the cost of rails, that has been fixed and maintained for a great many years, the basis of it being twenty-eight dollars for fifty-six pound sections.

Q. How about general material?

A. Lumber has advanced, building material has advanced, but to what extent I can't say, but I know it has advanced, and so has labor in the way of wages.

Q. Can you state whether or not in your opinion if you had to make this estimate of values to-day, you would make it any less than you have it here?

A. I would probably make it more, if I found conditions justified it, which I believe to be the case.

Cross-examination.

MR. NEEDHAM: Q. I will ask you with reference to the equipment, as to the source of information you had with reference to the equipment, its character and amount, did you make a personal examination of it all, or did you take the statement of officials of the road with reference to the equipment?

A. I did not make a personal examination of it all, but I made a personal examination of each class of equipment. That is to say, I examined one or two

sleeping cars, parlor cars, coaches, express cars, box and flat cars, maintenance way cars, at each of the termini I found some of this equipment, and as to the original cost of course I had to take that from the equipment list of the company, and simply examined them to see the nature of the equipment and its condition. Of course, it was impracticable to examine all the equipment because some of it was off the line.

Q. As to the amount of the equipment and the type of the equipment, outside of those you did examine of course you had the statement of the railroad company?

A. Yes, sir.

Q. And your valuation of the equipment had reference to the types of cars, locomotives and other equipment as represented to you by the railroad company?

A. And from my knowledge of the case of passenger cars, passenger coaches, being all the same class, and of the sleeping cars and parlor cars, of which I was largely familiar as also the cost of engines of the different types and weights.

Q. But as to the types and weight, the rolling stock generally, that you took from the statement made to you by the Company of course?

A. Yes, sir.

Q. Except as to the few you examined?

A. Yes, sir.

Q. And the valuation which you attach to that was valuation new or replacement?

A. Valuation new, but I made no allowance or deduction of it for this reason: that at the time the examination was made the cost of equipment, including the power was very far in excess of what was the price at the time the equipment as a general proposition was purchased.

Q. Was the time of the purchase of the different equipment given to you by the railroad company?

A. No, sir; but you could very readily determine

by looking at the equipment whether it was old or new.

Q. You saw very little of it?

A. I saw a great deal of it.

Q. But you saw comparatively very little?

A. I presume I saw over fifty per cent of the passenger equipment, of course of the freight equipment I saw a smaller percentage.

Q. And as to that you had to take the statement of the railroad company?

A. I did.

Q. And the value which you attach to it, and included here, is the value of it new?

A. The value new.

Q. At the time you made the examination?

A. Yes, sir.

Q. Can you say approximately how long any of this had been used?

A. No, I can't, but I could tell from the examination of the construction of some of the cars that had been in service probably for several years.

Q. Those that you saw?

A. And I saw some that were new, that were bought within a month or two of the time the examination was made. The equipment was pretty well maintained and in good condition by virtue of its maintenance as it was at the time of the purchase, so far as the passenger equipment was concerned.

Q. But you went on the theory of reproduction?

A. I did.

Q. You speak of the value of the buildings, you say you added forty per cent on its cost?

A. Yes, sir.

Q. You took the cost as represented to you by the railroad company?

A. I took their costs, necessarily, yes, sir.

Q. Forty per cent then of your valuation or forty per cent of their cost is represented in your valuation of nine hundred—

A. Of its original cost, assuming that the contract

price as furnished me by the company was practically the correct cost.

Q. So that of your valuation, sixty per cent of that would be the cost of the property as represented to you?

A. Yes, sir; it was based on the increased cost of building material, I knew what the cost was at the time the road was built in 1893 or four, for ten dollars a thousand you could buy any building material, and I knew at the time we made our examination that you had to pay from eighteen to twenty-five dollars.

Q. And that forty per cent was arrived at by taking the general condition between 1893 or four, and 1907?

A. Yes, sir; that is what I did.

Q. Of these different materials which entered into the buildings?

A. It may be fourteen dollars a thousand instead of ten and eighteen, I took the medium between the two.

Q. Well, did that apply to other materials?

A. That applied to building material and bridge material, bridge material being in some instances as high as thirty dollars a thousand.

Q. But you estimated as a general average—

A. Forty per cent right through.

Q. In reference to the equipment, did you add anything to equipment?

A. No, not a thing, I just accepted those figures.

Q. You heard Colonel Elliot's statement on the stand here, would you differ from him at all with reference to the source of information with reference to the different parts of the road, you heard what he said about the source of information?

A. No, sir; it seems to be correct and in accordance with my recollection. In the matter of the trestles, the length of trestles and the length of bridges, that as he stated, I believe, will be found in our original report because they were based on actual meas-

urements. We walked over the trestles and measured them and examined them by counting the vents and taking it from center to center. But the source of information was as he stated.

Q. With reference to the trestles and bridges, I notice that you put it down here as cost, that means the cost to the railroad does it, or does it mean the cost in 1907?

A. No, as I understand it, that was Major Elliott's part of the examination. As I understand it, that was the cost of the trestles at the time they were constructed. I wish to state this in connection with the trestles: we examined them and found them in first class condition, that they are properly maintained, they are practically as good in 1907 as they were when they were put in there.

THE COURT: Q. You found the equipment and the buildings and all these matters that you have referred to, in good condition?

A. I found them in excellent condition, with the exception of such equipment as were in the shops for repairs, that always represents about ten per cent of the rolling stock of the company, in the shops.

Q. You would regard the road as equipped in a first class manner?

A. Absolutely so.

Q. And also the character of the road itself as constructed, a first class road?

A. The character of the road by comparison with our own Seaboard Air Line, in better condition than our road, and we consider our road in good condition.

Q. What safety signal system is in use on the road?

A. That I am not prepared to answer, sir. They have the usual signals, but I don't know if they have any of their line under block at all.

(Witness excused.)

Thereupon the complainant to further maintain the issues upon its part produced and caused to be

sworn as a witness one A. C. Dittmarr, who testified as follows:

A. C. DITTMARR.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. A. C. Dittmar.

Q. Where do you live?

A. Fort Pierce, the County seat of St. Lucie County.

Q. How long have you lived there?

A. Twenty-two years, since 1889.

Q. What is your business or occupation?

A. Real estate and insurance.

Q. How long have you been engaged in the real estate business?

A. Why, practically ever since I have been here.

Q. Did you in 1907 make any valuation of the land of the East Coast Railway?

A. Yes, sir.

Q. And lands owned by the Company?

A. Yes, sir.

Q. Look at this and see if those are your valuations?

A. Yes, sir, I recognize this as my original estimate.

Q. Did anybody assist you in making those estimates?

A. Yes, sir; Mr. Fee and myself, Mr. F. H. Fee, of Fort Pierce.

Q. What experience have you had in knowing the value of lands in St. Lucie County, Mr. Dittmar?

A. Well, by actual sales, by selling land for other people and in making a great many conveyances, I am also notary public.

Q. In making those values, did you—in ascertaining those values in 1907, how did you ascertain them?

A. Well, by estimating lots of lands according to the land, as well as adjoining lots.

Q. Did you go on the lands and on the right of way personally in making the examination?

A. Yes, sir, Mr. Fee and myself went over the whole line, from the St. Lucie River to the San Sebastian River, clear through the county.

Q. And in making that estimate of values of the right of way, how did you ascertain the values?

A. Well, we took the values according to the values of land abutting on the right of way, on both sides. That is the only way you could get at it that we knew of.

Q. Was that estimate a fair and reasonable one in 1907?

A. Yes, sir.

Q. Did you consider it a reasonable estimate or value?

A. We considered it a reasonable estimate, yes, sir.

Q. You say that those values were reasonable values at that time?

A. Yes, sir.

Q. Since you made these estimates in 1907, has there been any change in the values of lands in that territory?

A. Yes, it has in some places. The land at Fort Pierce has increased in value probably one hundred per cent, during that time. South of Fort Pierce, I think the values are about stationary, about the way they were then.

Q. How about north of Fort Pierce?

A. North of Fort Pierce there is some increase. Maybe from forty to fifty per cent, especially from Fort Pierce North through the Viking and Osceola section, it has increased more than that further up, but it was an average of fifty per cent increase from Fort Pierce north to the county line.

Q. What territory is embraced in the country south of Fort Pierce?

A. Why, that is pineapple country.

Q. Has there been any increase in values along that line?

A. Why, there is probably in some of the pineapple fields, but I guess the land itself is about the same price.

Q. Now, taking the whole territory that you valued, what would you estimate the present value compared with the value you and Mr. Fee found in 1907, taking the whole territory as an average?

A. Well, in the whole territory there would be an increase of—

Q. Of about what percentage?

A. Well, I would say probably an average of forty per cent.

Q. Now, will you kindly take these papers and tabulate and aggregate it so that we may get as—

A. There is some land the railroad company bought since then that is not on this.

Q. Oh no, we don't care anything about that, we want the actual price they paid for those lands. Your territory began at the San Sebastian River did it not?

A. Yes, sir.

Q. At the San Sebastian River, mile post 213 to mile post 261?

A. Yes, that is what it is on the south line of the county.

Q. I find here an aggregate of the right of way $51,661.35?

A. I guess that is right, there.

Q. You think that increased forty per cent since that time, an average around?

A. Yes, sir.

Q. Now, can I get you to-night to take that and aggregate that for me so that we can have the aggregate figures?

A. Why, Major, I would like to go home to-night.

Q. Well, you say you estimate an increase in values about the same in the town?

A. Yes, sir.

Q. An average on the whole about forty per cent?

A. Of course, in Fort Pierce the values have risen at least one hundred per cent.

Q. But your estimate of forty per cent—

A. Would cover the whole territory.

Q. You think that a reasonable estimate?

A. I think it would be, I think that would be very conservative.

Q. You think that is excessive in any way?

A. No, sir.

Q. You made your estimate from absolute knowledge of sales and values?

A. Yes, sir.

MR. ESTERLINE: I move to strike out the absolute knowledge of increase of values.

MR. ABRAMS: Well then I will put it this way.

MR. ESTERLINE: I ask that that be stricken.

THE COURT: Well, let it be stricken out.

Q. State to the court upon what you base this estimate?

A. Why, I make out a good many conveyance papers. I expect I have made out several hundred since 1907; that I know about the values of those lands, actually sold them, sales from one party to another, have sold considerable myself, and I get more for it now than I got in '97. I get two hundred per cent more than I charged in '97, for the same lot.

Q. Has there not been quite a development along that line, great activity in real estate.

A. Yes, sir, there is now and has been for several years, two or three years.

THE COURT: Q. How long a distance is covered by your report?

A. About forty-two miles, something like that.

Q. Is it all in one county?

A. Yes, sir; all in St. Lucie County.

Q. And your estimate and figures are embodied in the report that is here present?

A. Yes, sir.

Q. Has that been identified?

MR. ABRAMS: Yes, sir; he has identified it.

THE COURT: In that report you state the different pieces of property?

A. Yes, sir.

Q. And their approximate location and the value that you put upon it?

A. Yes, sir.

Q. And that value as so expressed was correct, according to your best judgment?

A. Yes, sir.

Q. And the present value of the property has in the main increased?

A. Yes, sir.

Q. That is not complete, not having been figured up?

MR. NEEDHAM: The original has, but the copy has not.

MR. ABRAMS: I have copies of this original report, copy of the original papers.

MR. ESTERLINE: I will cross-examine him on this.

Cross-examination.

MR. ESTERLINE: Q. Mr. Dittmar, how long have you resided at Fort Pierce?

A. Twenty-two years, a little over.

Q. Where did you come from to that place?

A. I came from Sumpter County, Florida.

Q. Have you been in the real estate business there all that time?

A. Why, most of the time, of course. I guess I have for the past twenty years, about twenty years.

Q. For the last twenty years?

A. Yes, sir.

Q. Engaged in any other kind of business?

A. Insurance.

Q. Insurance, real estate and insurance?

A. Yes, sir.

Q. And your activities extend from the San Sebastian River on the north to the St. Lucie River on the south?

A. Yes, sir.

Q. And you have been selling real estate and negotiating for the sale of real estate in that community during all that time, have you?

A. Why yes, I have, well not in every section, especially I have never sold any at the St. Lucie River.

Q. In what sections particularly?

A. Well, around Fort Pierce and Gifford.

Q. How large a place is Sebastian now?

A. Oh, that is a small place, only about a hundred and fifty or two hundred.

Q. Gifford?

A. Gifford is about the same size.

Q. Vero?

A. Vero has got probably a hundred and fifty.

Q. St. Lucie?

A. St. Lucie has—St. Lucie is a small place too, Oh, I guess there is less than a hundred inhabitants in St. Lucie, probably fifty or sixty.

Q. Fort Pierce?

A. Fort Pierce has about fifteen hundred.

Q. White City Station?

A. Well, when you get down in there those are only neighborhoods, there is no towns there at all.

Q. Eldridge Station, is that the same, just a station and siding?

A. Yes, sir.

Q. Is there a station or siding?

A. No station, siding.

Q. Huxton?

A. There is no station there, there is a siding.

Q. Jensen?

A. Jensen is a small town, there is a depot there, a good depot.

Q. Now, in 1907, when you and Mr. Fee made this estimate, you were employed by the Florida East Coast Railway Company, to do it?

A. No, sir; I don't know who I was employed by.

Q. How did you come to do it?

A. Why, there was a Mr. Ackman came down and asked us, Mr. Fee and myself whether we would act as appraisers on the line, neither of us knew what for.

Q. You don't know Mr. Eckman?

A. I knew Mr. Eckman, he was at Delray then at that time running a canning factory.

Q. And you made this estimate for him?

A. No, I understood we was to make the estimate for the railroad company.

Q. Well, you were in the employ of the railroad company in the way you were going to make the estimate?

A. Well, we may have done that.

MR. ABRAMS: This man never was employed by the railroad company.

Q. At the time you made the estimate you understood you were making it for the railroad company?

A. Yes, I understood it was to be made for some such purpose, for some suit they had on hand, but I never got a cent of pay from the railroad company, except what I got paid for being here in 1907.

Q. You did this for nothing?

A. Well, all we got was what we got out of the trial before.

Q. I know, but this estimate, how long did it take you to make this estimate?

A. Why, it took us several days. We was one day on the road with an automobile.

Q. How far did you go that day?

A. Why, we made the estimate, went the whole length of the County.

Q. Then after that, what did you do?

A. Why, then we made the estimate.

Q. Back?

A. Yes, sir, we come back on the train. Mr. Eckman took us with an automobile on the track, one of

these track automobiles, and took us to Sebastian, and we went back on the train that night.

Q. When you started to make the estimate you and Mr. Fee started in an automobile, what time in 1907?

A. I don't know, it was in the fall, either in October or November, I think.

Q. As near as you can get at it?

A. Yes, either October or November.

Q. You started in the morning from where?

A. Fort Pierce.

Q. Went which direction?

A. Went south as far as Stewart.

Q. On this trip in the automobile?

A. No, sir; it was not on this trip. Took us about an hour to go down there.

Q. Then you came back on the train?

A. No, we went to Stewart, went down and come back and passed through Fort Pierce and went to Sebastian, and got there in the afternoon about four or five o'clock, then Mr. Ackman went on with that automobile, I don't know where he went up the road, and Mr. Fee and myself waited for the train and went back to Fort Pierce.

Q. And then that was the examination and investigation that you made on which you made this memorandum?

A. Well we looked at the lots, we stopped at different places where we was not familiar with them, but both of us was pretty well familiar with all the land in the county, everything along the railroad I have been on nearly every forty acres f it.

Q. Who made this quite lengthy memorandum of the different lots and dimensions?

A. Why, some of them we made, and we got a list of the lots from the railroad records, they sent us a list, which I think were sent from Mr. Ingram's office, I don't remember where they were sent from.

Q. The railroad company sent you a list of the lots, some you got yourself?

A. Yes, sir.

Q. You know which of these the railroad company sent you?

A. I do not.

Q. Could you tell by looking at the memorandum?

A. No, they sent most of them, except a few that probably they had missed. I don't know whether I can tell them now.

Q. Can you tell any of them?

A. I don't really know. They made a pretty fair list of it. We noticed a few lots that they missed, it was a very small proportion.

Q. Now, all you did was to put down the figures and the valuation?

A. Yes, sir.

Q. You did that in conference with Mr. Eckman, when he was with you?

A. No, sir; Mr. Eckman had nothing to do with that, we done that after he was gone. He just took us up and down the road.

Q. And you based it after he had gone?

A. Yes, sir; Mr. Fee and I got together and put the values on it.

Q. Where did you go to get together?

A. At the Bank of Fort Pierce.

Q. After you came back?

A. Yes, sir.

Q. How long afterwards?

A. I don't remember that.

Q. You say at the bank of Fort Pierce?

A. Yes, sir.

Q. Whose bank?

A. Why it is the bank, of which Mr. Fee is President.

Q. He was president of the bank?

A. Yes, sir.

Q. Is he so to-day?

A. No, sir.

Q. You know whether he has any connection with the railroad company?

A. No, sir; he has not. I am interested in the bank too.

Q. That was simply a convenience you went there?

A. Yes, sir; my office was right in the upper story, and went right in the room of the bank.

Q. How large an office have you, Mr. Dittmar?

A. I have two rooms.

Q. In business for yourself?

A. Yes, sir.

Q. Now, that was in the year 1907, in the autumn, October or November?

A. Yes, sir.

Q. Now, what was the population of those towns at that time?

A. Well, all the towns except Fort Pierce were pretty nearly the same.

Q. There has been no growth in the towns?

A. Not much, except north of Fort Pierce, there has been more settlement in there than there was south, new settlement. At Fort Pierce there was quite an increase.

Q. At Fort Pierce alone?

A. Yes, sir.

Q. Your operations are confined, are they not, largely around Fort Pierce?

A. Yes, sir; mostly.

Q. Now, your clients come from Fort Pierce largely and around there, or from the outside?

A. Well, they come from the outside a good deal too. I have business clear up to Sebastian. I was up there last Saturday a week ago.

Q. How often do you go up there?

A. Oh, I don't know, probably six or seven times a year.

Q. Now, lands are sold mostly are they not around these smaller places?

A. Why, there has not been as much sales around the smaller places as there has around the larger places.

Q. The sales you have made have been—

A. From Fort Pierce north maybe for fifteen miles. There are some sales I had in other parts of the county.

Q. Now, to the south, you operate very much lands?

A. Yes, less than the north.

Q. You don't operate much there at all, do you?

A. Very little.

Q. You say you have not been down to that St. Sebastian River very much?

A. No, sir, not since then I have not been—well, I have been down four or five times.

Q. Were you down there at the time you made this estimate?

A. Yes, sir.

Q. And you made that whole trip in an automobile?

A. Yes.

Q. In a day?

A. Yes, sir.

Q. At the time you made that trip, were or were not these particular lots pointed out to you and identified, or did you go through where you understood they were located?

A. Why, most of them were identified, of course, land outside of the towns, we just took the lay of that as we went.

Q. Who identified them?

A. Why, the people living there.

Q. Well, they knew the lots as they are described in this memorandum?

A. Yes, sir; we got some of the data in Jensen, we got it from Mr. Austin, I don't remember there was somebody else, but Mr. Austin I remember was there and pointed out those lots. There was one or two more men, I don't remember.

Q. Are you familiar with the property of the railroad company at Fort Pierce?

A. Yes, sir.

Q. How extensive is it?

A. Why, they got quite a lot of it now.

Q. How much approximately in acreage?

A. Why, I don't know, there is some of it in town lots, most of the former property they had was in town lots. What they sold since 1907, they bought some in acreage, I don't know how much that was, it is not on that list, it has been bought since.

Q. Take this list here, what would that amount to approximately, in acres, I don't mean you should give the accurate statement, but just your best judgment?

A. You mean the right of way?

Q. Yes, all of it?

A. Well, the right of way is different widths, in places here the right of way is fifty feet, the right of way is fifty feet in the north part of town down to section ten, down to the station line or Dittmar's addition it is fifty feet, then it is forty feet and then it is sixty feet again, as far south as Palmetto Avenue, and then they have got a hundred and ten feet from there two blocks south, it would be hard to say that, unless I had a plat of it, because it is in different widths.

Q. And these lots were fifty by one hundred?

A. These are.

Q. Pretty large lots are they?

A. That lot one of Block "C," that is fifty by one hundred that is right on the curve there. These here (indicating) now I couldn't tell exactly without a plat what that is, that runs in a wedge shape. That is however about twenty-five by probably about three hundred feet up through there. These lots six and seven, block "H," they were fifty by two hundred each. Lots seven and eight Block "E," I think they were fifty by one hundred and fifty; the half of lot four of Block "J," I can't tell the size of that, that was bought. That was up near the water tank, I think that is the lot the water tank was on, and then on in the "Y" of lot four, all of those lots are fifty by

one hundred and forty. All this is the "Y" lots one to eight of Carlton's addition. I can't tell without the plat how much is in there, but probably five or six lots. Lots six and seven and parts of lot one all these lots in Carlton's addition were fifty by one hundred and forty, and then one hundred by two hundred. Lots nine and ten subdivision of lot four, that comes outside, that is south of the old Fort Pierce flat, and east of the Carlton addition.

THE COURT: You want to go into detail at this time, makes a very large record?

Q. You have any idea how many acres that would make, whether twenty-five acres, if you can state approximately what it is, that is all I want?

A. All this part is in town lots.

THE COURT: Q. The aggregate quantity at Fort Pierce is how much?

A. I could figure it within an acre if I had the plat here.

Q. Give within five acres of your judgment?

A. Well, if you will figure the roadway from the north to the south line of the town, it is 1.65 mile north and south that is the length of the right of way, but then these lots have different widths, there is fifty feet, sixty, forty, one hundred and ten feet.

Q. These descriptions of the property in Fort Pierce would amount to twenty-five or thirty acres would it not?

A. I think it would amount to that.

Q. Now take this other point, Sebastian, that property described in there would amount to pretty near all the property in that little town, wouldn't it?

A. Oh, no.

Q. How big a place is that?

A. Oh, it is scattered, I don't believe there is more than a hundred and fifty, from one hundred and fifty to two hundred people there.

Q. How many acres would there be there?

A. I don't know, now we estimated about two

hundred by five hundred feet, we stepped that off, that is where the station house is, that is outside of the town. We considered that by the acre.

Q. That is all owned by the railroad?

A. Yes, sir; all of it.

Q. And so here with Wabassie, of quarter sections?

A. Well, that is only part of it, you see that is practically one hundred by two hundred, I don't think there is a thing but railroad property where the section house and depot was.

Q. Now, what in your judgment has caused this increase that you have represented to be amounting to forty per cent?

A. It is building up of the country I guess.

Q. It is not the building up of the town?

A. Well, it is at Fort Pierce, and then the building up of the country. Now land back of Fort Pierce and Austin and Walton, all the way back through the country have been bought up by large companies, they have crowed the back land up, forty dollars an acre for that.

Q. The land companies paid for that?

A. Yes, sir; the land companies paid for it.

Q. The railroad company has been buying too has it not?

A. Not that I know of, only I know what they bought in Fort Pierce.

MR. ABRAMS: Your Honor please, I object to that, the railroad company has bought no land except for railroad purposes.

MR. ESTERLINE: The witness stated just now that the railroad company had bought some land.

A. Yes, but it is for their lands, they have already put their side tracks on it and new depot.

Q. That is at Fort Pierce?

A. Yes, sir.

Q. They have other lands there?

A. I don't know anything about their outside lands.

Q. You know these lots, the ones at Fort Pierce, they were pointed out to you, all through the city?

A. Yes, sir, I know every lot they got there.

Q. And their holdings are quite extensive at Fort Pierce?

A. Yes, sir.

Q. Now, how many land sales did you make in December, do you remember?

A. No, sir; I do not.

Q. Approximately?

A. Probably five or six.

Q. And as many more in November?

A. No, no I have made them off and on all through the summer and fall. That is in town lots.

Q. You sell town lots there, small sales, I assume?

A. Yes, sir.

Q. But you have sold half a dozen or so in December and less in November?

A. Yes, sir.

Q. You don't recall how many the previous months?

A. No, sir.

Q. And those have been all in Fort Pierce or the most of them?

A. Yes, sir; those lots all in Fort Pierce, I have not sold any town lots in any of the other towns. This estimate we give is from the people in the town there.

Q. Oh, those estimates—

A. And from actual sales, there was a good many of those things gone right in my office.

Q. But you did none of that business outside of Fort Pierce?

A. No, sir.

Q. Neither north nor south?

A. Yes, we have had sale of lands, we sold land way up as far as Quay.

Q. But none in any of these villages or towns?

A. No.

Q. Your sales at these other points have been few and far between?

A. Yes, sir.

Q. Your operations being confined to the sale of town lots in Fort Pierce?

A. Yes, sir.

Q. Have you any idea outside of Fort Pierce what that would amount to, since 1907, outside?

A. What, about the outside land?

Q. Yes.

A. Since 1909, I can't remember, I could not tell.

Q. And previous to 1907, you don't recall?

A. No, sir.

Q. Your estimate was based on what you heard when you went through these places in the automobile?

A. Well, before 1907, we had as many land sales as we did since then.

Q. But you don't remember what they were?

A. I don't remember what they were now. I believe before 1907 there was more than there was since, since the last year or two.

Q. And your estimate in 1907, was based on information you got by stopping and inquiring of the people?

A. Not altogether, I got a good deal of that information from my office in making the conveyancing as notary public.

Q. How long after you took the trip was it you made the estimate?

A. Well, it was not more than a week.

Q. Are you in any way connected with the Florida East Coast Railroad Company?

A. No, not at all.

Q. Are you doing any business for them in Fort Pierce?

A. No, sir.

Q. I didn't get quite clear this $51,651.45 as to the total aggregate, or something, just what was that, will you explain that to me?

A. I think that was the whole of the Florida East Coast holdings that we had listed there, of the right of way and town lots.

Q. The whole of their holdings, including the right of way and lots?

A. Yes, that includes all the right of way through the whole county, that includes everything.

Q. Everything they own?

A. From Sebastian down to the south end of the county.

MR. ABRAMS: That is the right of way.

MR. ESTERLINE: Q. Are you able to determine how much of that is right of way and how much is other lands?

MR. ABRAMS: I say the report shows it is nothing but right of way.

A. I could not, that is a matter of figures.

Q. You do know some of it is not used for right of way at Fort Pierce?

A. Why, there is very little.

Q. There are some of those lots not used for anything?

A. There is only one lot I know they don't use for anything, and that is lot "C," they did not use it, and they bought it because the corner runs in there, the railroad bank, and they had to buy the whole lot to get the right of way through there.

Q. Now, after you made this report, what did you do with it?

A. I sent it up here to—I don't know whether I sent it to Mr. Ingram or to Mr. Abrams.

Q. To whom?

A. I might have sent it to Mr. Ingram or Mr. Abrams.

Q. Who is Mr. Ingram?

A. He is Vice-President I think of the Florida East Coast Railway.

Q. And Major Abrams was counsel for the Company?

MR. ABRAMS: I was not.

Q. Why did you send it there?
A. I was requested to send it there.
Q. By whom?
A. I don't remember, I think by Mr. Ingram.
Q. Was he with you at the time you made this estimate?
A. No, sir.
Q. The same person that sent you the letter giving you the description of the property?
THE COURT: I think you have gone into that far enough.

Cross-examination.

MR. BOGGS: Q. You say you are not in the employ of the Florida East Coast Railroad Company?
A. No, sir.
Q. Are you in the employ of the Model Land Company, or do you handle lands for them?
A. No, sir; I don't handle lands for any Company.
Q. You don't handle lands for any company owned by the Florida East Coast Railroad Company?
A. No, sir. I don't handle lands only for private individuals, mostly our own.
Q. Now, Mr. Dittmar, you put a valuation here of eighty dollars per acre on some land in Section 19, 30, Township 23, South range 40, on what do you base that valuation of eighty dollars per acre?
A. We base that on what they ask for the lands there.
Q. Do you know anything about any sales being made there?
A. I don't remember of any right now.
Q. Don't you know it to be a fact, Mr. Dittmar, that Senator Hudson and I personally bought that particular land that you have valued there, at 8.50 an acre, in the year 1909?
A. No, I didn't know that. I bet you wouldn't sell it for that.

Q. Well, don't you know we are advertising it for sale in the Fort Pierce papers in small tracts at $30.00 an acre?

A. I think St. Lucie County bought a piece of land in there that they paid a good deal more than that, wasn't that a piece of the same land?

Q. They haven't bought any from us. What I asked you was, don't you know we advertised that hammock land in section 19, 30 at $30.00 an acre?

A. No, sir; I did not.

Q. Have you seen the advertisement running in the Fort Pierce papers offering lands for sale in the Bonds Tract at thirty and forty dollars an acre?

A. I seen the advertisement, I don't know whether they got the price.

MR. ABRAMS: Do you propose to take the stand that I can cross-examine you as to that land?

Q. Well now, are you as sure, Mr. Dittmar, of the values that you put on that land as you are of the balance of the values that you put on here?

A. Well, I don't know that I am, because I know what people are asking for the land that is abutting on the railroad. Now, you are talking about land that is off from the railroad.

Q. No, sir, this abuts on the railroad.

A. There is mighty little that you can get up there less than that.

Q. Well, now, you think it was worth eighty dollars an acre in 1907, and it is worth one hundred and twelve dollars now, forty per cent increase?

A. Yes, forty per cent increase. I don't think you can get any for one hundred dollars an acre as far up as that, unless it is land that is not fit for anything, but that pine apple land you could not get.

Q. But this particular land in Section 19, 30, that you have listed at eighty dollars an acre, that must be good land?

A. I suppose so, I don't remember just what it is now.

Q. You must have thought it was pretty good land

when you put it in at eighty dollars an acre, didn't you?

A. I guess so, I don't remember the description there.

Q. Do you know anything about the values when the road was built there, Mr. Dittmar?

A. Yes, sir.

Q. The values of land up there?

A. Yes, sir.

Q. How did they compare with these values that you put on here?

A. Why, they was about five dollars an acre.

Q. Five dollars an acre at the time the road was built?

A. Yes, sir.

Re-direct examination.

MR. ABRAMS: Q. Mr. Dittmar, you testified that White City was only a station, isn't there quite a settlement west of White City?

A. Yes, about two miles west, there is the town of White City.

Q. Isn't that the station that supplies the town west of it?

A. Yes, sir.

Q. Now, you have also been asked as to who employed you and the like, who paid you, who sent you a check for your services?

A. I don't know, I don't remember who it was but it was sent to me, after I had been up here to the other examination in 1907 or 1908.

Q. Can you recall whether or not it was my check that was sent to you for you?

A. I don't recall who sent it, but I know I got my pay, my mileage and my per diem.

Q. I say can you remember if it was not my check that you received?

A. I don't remember.

Q. You can't recall?

A. I can't recall.

Q. Now, since you have been engaged, and since the formation of St. Lucie County, have you not kept posted as to the values of real estate throughout the county?

A. Yes, sir.

Q. It has been a part of your business, has it not?

A. Yes, sir; the main business.

Q. These lots in these villages, are they not all in the vicinity of the railroad stations and depots?

A. Yes, sir.

Q. When was Fort Pierce laid out as a town, can you say?

A. Why, you mean when it was incorporated?

Q. Oh, no?

A. Why, there was a part of it laid out in a town in 1887.

Q. Was it not laid out as a town before there was any railroad there?

A. Yes, sir.

Q. Is not Fort Pierce a point where there is considerable railroad work done?

A. Yes, sir.

Q. Is it not a point where the trains gather to be made up?

A. Yes, sir; and they change engines there, change crews there.

Q. Have a "Y" there, haven't they?

A. Yes, sir; round house.

Q. That takes up quite a lot of land, doesn't it?

A. Yes, sir, that takes in a good many of those lots in Carlton's Addition.

Q. What is within the "Y"?

A. Round house.

Q. That is these lots which you have described in these reports, you say except one, which they had to buy on account of the proximity to the water tank?

MR. ESTERLINE: I object to that, Your Honor.

THE COURT: He has made the statement, I don't think it is necessary to repeat it.

Q. All these lots in the town here are used by the railroad, are they not?

A. Yes, sir.

THE COURT: He has stated that.

(Witness excused.)

Thereupon the complainant to further maintain the issues upon its part, produced and caused to be sworn as a witness one W. L. Bragg, who testified as follows:

W. L. BRAGG.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. W. L. Bragg.

Q. Where do you reside?

A. At present in West Palm Beach.

Q. What county is that in?

A. That is in Palm Beach County, formerly Dade County.

Q. What is your business or occupation?

A. I am a land agent.

Q. Do you sell any lands for the Florida East Coast Railway?

A. I have sold lands for them, yes, sir.

Q. Selling any of them now?

A. No, I am not selling any for them now.

Q. Or the Model Land Company?

A. I am selling for the Model Land Company.

Q. Do you receive any salary from the Model Land Company?

A. No, sir.

Q. Sell on commission?

A. Yes, sir; I also have many other companies. I am not agent for the Model Land Company alone.

Q. You sell for others?

A. I have all the land in Palm Beach County of the companies from about five miles of West Palm

Beach to the south end of the county, all of the land irrespective of ownership. I am agent for all of the owners east of the Everglades lands.

Q. Are you familiar with the values of the lands in this section of the country, beginning at Lantan, Hypoluxi, Delray, Bocratan, Deerfield and Pomona?

A. Yes, sir.

Q. Are you familiar with the land in that territory?

A. Yes, sir; I am.

Q. How long have you known those lands, Mr. Bragg?

A. Why, I have known the lands in that section since 1909.

Q. Are you familiar with these lands—

A. I better say 1908.

Q. Are you familiar with these lands described in this list as owned by the Florida East Railroad?

A. I am familiar with the list, but as to the exact acreage and the exact description there I would want to refer to my records. I take it they are as described in there.

Q. These lots are described as one and a half acres?

A. I take it that they are as described in that list.

Q. Well, presuming—

A. I presume that is correct, yes, sir.

Q. Are you familiar with the lands themselves?

A. I am.

Q. This list made by Mr. Dewey, are you familiar with the values of the lands on the right of way from mile post 306 to mile post 334?

THE COURT: I understood you put in his hands report made by Mr. Dewey in regard to these lands, made in 1907, in the same judicial investigation that these other reports are made?

MR. ABRAMS: Yes, sir.

THE COURT: And Mr. Dewey, who made that, you understand is now in a sanitarium in Tennessee?

MR. ABRAMS: Yes, sir.

THE COURT: Do you know that, Mr. Bragg?

A. I do know it is a fact, and I became personally acquainted with Mr. Dewey's business after that and I know it is a fact. These lots given to me of lands in my territory, and as I say I presume that these descriptions are correct, and I have been over it very carefully and made my own figures as to the valuation of these strips.

Q. Now, as to these lands on this last sheet here.

A. That is the right of way you gave me, and I have not been over this very carefully, that is section by section, although I am personally acquainted with that country down there. I can only give you a general idea of the values of the lands along the right of way, I could not give you a detailed idea as to this.

Q. Can you by investigation this evening, go over it very carefully and arrive at the proximate values?

A. I could arrive at something, yes. I have been over the first part here.

THE COURT: From what point to what point does the first part of the report show?

A. This covers here from Pomona to Lantana, and Lantana is five miles south of Palm Beach, 307 mile post is two miles north of the Lantana post office, and this covers to the north end of the county, to the middle of section 4 9.

Q. How many miles between those two towns, Latana and Pomona?

A. It would be twenty-seven miles.

Q. Now you are familiar with that?

A. Yes, sir.

Q. What is your estimate of values?

A. Well, I have only been over these particular things which he has given me on the list, I have not touched the right of way, that is on this list here, that is from mile post 307 to mile post 334, the 334 mile post is just below Pomona.

Q. That part you have not been over?

A. That part I have not been over.

Q. Well, turning your attention to that part of

which you are prepared to state, please give us your values?

A. Well, say at Lantana.

Q. Give his estimate of 1907, and yours?

A. I see that Mr. Dewey has Lantana, has given 50 by 113 feet, lot two.

Q. Let me ask you one question, what was Mr. Dewey's occupation?

A. Mr. Dewey occupied the same position I have, owing to his age he gave up the position.

Q. He was familiar with the price of real estate?

A. Mr. Dewey was a man that had years of experience right down in that country. I suppose Mr. Dewey must have been there fifteen or eighteen years.

Q. Selling and buying land?

A. Selling and buying land, agent for the different land companies, occupied the same position that I do, in fact he turned his business over to me.

Q. Proceed?

A. He has this valuation here, I presume that is the lot in Lantana where the station is on, valued at $150.00 an acre, that land right now, I would agree to sell that land for $225.00 an acre right now. I make that price, because I can go and sell every foot of this land in ten days at that, and I call the land in Lantana and Hypoluxi $225.00 an acre. I see Mr. Dewey has it in 1907, which I see from his report, at $150.00 an acre, and judging by what I know of the land I should say that that was a fair price at that time, because time I took Mr. Dewey's agency, the price began to advance. Just to show you what I mean by that, he was selling land at $20.00 an acre, in talking with him I asked him if he did not think it would sell for $25.00, he said he thought it would, and I started out with $25.00 and I had no difficulty. Since that time the lands have gradually increased in value, so that the same land that Mr. Dewey was selling at $20.00 an acre I am now selling at $35.00. Now, here is lot one, in Brown's Subdivision—

Q. Those lots are in cities?

A. Anyway, it is down here at $30 an acre, but there is no land in that locality that is not worth $50.00 an acre.

Q. What is your estimate on it?

A. $50.00 an acre. Now, take this land down here, since this estimate was made the land which he has down here at $150.00 an acre, is worth $300.00 an acre right now, and will sell for that, and people would like to take it at that.

Q. What do you value it at now?

A. At $300.00. And lots that he valued here at $50.00 I value at $100.00, I do that because I am selling lots and have sold lots that he valued at $75.00 for $150.00, that is what I am basing this on, on what I have done.

THE COURT: Based it on actual experience.

MR. ESTERLINE: Your Honor, please, we want to preserve exception to this testimony. Mr. Dewey is absent. We want to object to the estimate made by Mr. Dewey going in the record from which the witness has testified.

THE COURT: Objection will be noted, exception noted.

MR. ESTERLINE: The testimony of the witness is irrelevant to the estimate made by Mr. Dewey.

THE COURT: I will allow it.

THE WITNESS: I am only going by this memorandum to identify it as to the description of the property, I am not paying any attention to Mr. Dewey's figures, I am only telling you what I see Mr. Dewey had certain prices on this land. I am making my estimate on what I know personally about the land at the present time. Now, down to Delray, the lots at $150.00 apiece, there are twelve lots.

Q. What did he make it?

MR. ESTERLINE: I object to that; that is going in subject to our objection.

THE COURT: Let him answer it.

A. Well, he has made a lump sum here of nine

hundred dollars for a certain tract of land, I put it on the basis of lots, there is twelve lots in one tract, and I find eight lots in another tract here, that the figures are not carried out on it.

Q. What do you make the whole thing?

A. In Delray? $23,043.50. Bocratan, I make the station lot at $147.50. At Deerfield, Sand Pit lot twenty-five acres, I make the price twenty-five hundred dollars, because within a week I had a man trying to buy it, came to me and wanted to know and was willing to pay that for it, if I would get it from the railroad company. That is the estimate I make that on. Now, here is a lot of 100 x 400 on the east side of the right of way at Deerfield, nine-tenths of an acre. Now, if that is the land I think it is, and I think I am correct, it is worth $350.00, for the reason that the Dredge Company wanted that lot or one near it, to erect their machine shops, and they are trying their best to buy a tract of land in there right in that locality. They have been to me within ten days to try and find a tract for them right in that locality, exactly where I think that piece of land is. And the station lot all included here I see amounts to five acres, and that is right in the center of the town of Deerfield, and if it is not worth five hundred dollars it is not worth a cent.

Q. How many acres did you say?

A. Five acres, and if there is five acres in it, I take it for granted that this statement is correct, if it is five acres, but that is worth five hundred dollars an acre for the reason that the canal being constructed there, for the last two or three months people have been buying everything in that locality and paying all kind of prices for the land, because of the particular location to the river, and the county highway.

THE COURT: Q. Is that the situation now?

A. That is where the city is now. In other words, if the railroad had to buy that land I doubt if they could get it at that price, under the conditions existing since that canal was definitely located. There

has been about fifty per cent increase in values in Pomona since then. I don't know how much land there is in that particular tract.

Q. How far did you say that was south or below West Palm Beach?

A. 134 mile post is just below Pomona, the highway mile post is in Pomona, thirty-five miles, it is a little further by the road than it is by the railroad.

Q. Now, Mr. Bragg, in these estimates, did you figure in any buildings?

A. No, I supposed I was to give the values of the land, that is what I understood you wanted, the value of the land.

Q. Then in making these values you have not considered any buildings on them?

A. Oh no, I am talking about the land. I would want to go and make an examination of the buildings before I did that.

MR. ABRAMS: Now I am willing to delay him and let him go over the right of way and examine the rest of those, gentlemen.

Cross-examination.

MR. ESTERLINE: Q. Mr. Bragg, these increases in value that you speak of relate to lands between the railroad and the shore, don't they?

A. Shore of what?

Q. The towns you refer to are near to the shore?

A. Well, which town are you referring to particularly?

Q. Well, you have several of them here? Which ones are near the shore and which ones are not?

A. What do you call near the shore?

Q. Well, on it or within sight of it?

A. I don't think any of them are in sight of the ocean. You may be able to see vessels coming in by their masts. None of them are on the beach.

Q. How far from the beach?

A. Which town?

Q. Well, take Lantana?

A. Lantana is about a quarter of a mile from the lake.

Q. And Hypoluxi, how far is that from the ocean, a mile?

A. Hypoluxi station, that might be a mile.

Q. What about Boynton?

A. Boynton is about three-quarters of a mile from the ocean.

Q. And Delray?

A. Delray is about the same, about three-quarters of a mile.

Q. And the same with Bocraton?

A. That is about a mile and a half from the ocean.

Q. And Deerfield?

A. Now, you mean straight out to the ocean or the way you go?

Q. Well, either or both?

A. From Deerfield straight to the ocean is about one and a half miles.

Q. Now, Pomona?

A. Pomona is about two and a quarter miles.

Q. Now, are these lots to which you refer in these cities or towns or are they out toward the ocean?

A. I take it by this list they are situated more in these towns.

Q. Situated in the towns themselves?

A. Yes, sir.

Q. Now, you spoke about the increase in values, do you refer to increase right in the towns?

A. I am referring to increase in the value of land improved, sir.

Q. Those towns grown any?

A. Yes, sir.

Q. How were they in 1907, how large a place is Lantana?

A. Lantana is a very small place, I suppose, it has a station and post office and several dwellings and farming community back of it.

THE COURT: That is around Lake Worth?

A. Oh yes, it is on Lake Worth, on the shores of Lake Worth, the dwellings are between the station and the lake.

Q. How many dwellings there approximately?

A. I couldn't say, I suppose all told fifteen or twenty dwellings.

Q. What has caused that increase in values in a village of fifteen dwellings?

A. Are you speaking particularly of Lantana?

Q. Yes?

A. The increase in value in Lantana is caused because of the fact that there is a new town established five miles between it and West Palm Beach, it is two miles long, that carries it down to mile post 307, and all lands in that vicinity have increased in value, and have been selling at increased value from that fact. Town called Lucerne.

Q. Is that on the road?

A. That is on the road from the railroad to the lake.

Q. What are those lands used for?

A. What lands?

Q. That have increased in value?

A. They are used for farming and vegetable growing.

Q. Now, take the station there, Hypoluxi.

A. Hypoluxi and Lantana are practically one.

Q. Well, is that the same, is the increase in value there brought about for the same reason as it is at Lantana?

A. Yes, and from the fact that people have come in there and bought lands in Lantana and a farm.

Q. How large a place is that?

A. Hypoluxi and Lantana are practically about the same town, one school house between the two, only two miles apart.

Q. One has the school house and the other the station?

A. No, sir; the school house is between the two, each have a railroad station and a depot.

Q. Now, Boynton.

A. That is about thirteen miles south of Palm Beach.

Q. How large a place is that?

A. I suppose four or five hundred people.

Q. There has been four or five hundred since 1907?

A. I don't know how many people there was in 1907, but I know there has been a number of lots sold, I sold some there myself, and I know a great deal of land has changed hands there in the last year and a half.

Q. These other stations I will ask you generally, are small stations like these to which you have referred?

A. Delray is larger than Boynton.

Q. How large is Delray?

A. I am only guessing at this, but I guess there is seven or eight hundred people of the town. My business does not require that I find out how many people there are in the town, so I never paid much attention to that.

Q. You are not familiar with the size of the town or the people, but are familiar with the values of the real estate?

A. I say the size of the town, six or seven hundred people; there might be eight hundred people.

Mr. Boggs: Your Honor, we would like to move to strike this exhibit and the testimony of the witness unless it is connected up by something to show that the railroad company actually owns this land, and that they actually use it for railroad purposes. To my observation this witness has not testified to that point; he has simply given his idea as to the value of certain land.

Mr. Abrams: That will be shown that every lot was used for railroad purposes.

(Thereupon the hearing was adjourned.)

Thereupon the hearing was convened at 9:30 o'clock, Friday, January 19th, 1912. Present, the same parties.

Thereupon the witness Col. R. H. Elliott was recalled and having been previously sworn testified as follows:

COL. R. H. ELLIOTT.

Cross-examination.

MR. ESTERLINE: Q. Colonel, in 1907, what was your occupation; what company were you with?

A. I was consulting engineer in Birmingham, Alabama.

Q. You were engaged to make these estimates for the Florida East Coast Railway?

A. I understand it was for a trust company, sir.

Q. Well, you were engaged to make them, were you not?

A. Yes, sir.

Q. By Mr. Abrams?

A. Yes, sir.

Q. Now, when was that, about when?

A. June and July.

Q. When was it you went over the line?

A. I think about the 19th or 20th of June.

Q. Of 1907?

A. Yes, sir.

Q. How long were you in making that trip?

A. I think we were occupied down there until about the 15th of July, then we returned later but I don't recall what we returned for except to go over some of it and give some evidence.

Q. That was about thirty days?

A. Less than thirty days.

Q. Less than thirty days after you went over the line?

A. Yes.

Q. You say from the 14th of June?

A. No, from the 20th of June until the 14th of July.

Q. Now you spent that time on the line?

A. Not all of it.

Q. How much on the line?

A. I presume about 10 days.

Q. Where did you spend the other fourteen days?

A. We spent them here at St. Augustine.

Q. What were you doing then?

A. Calculating.

Q. Now, how did you make this trip? Where did you start?

A. We had a train at our service and we lived aboard the train.

Q. Who composed your party?

A. Mr. Huger and myself with Mr. Goff, the General Superintendent of the railroad, and such supervisors as he chose to call on to go with us over the different parts of the road.

Q. Supervisors of the road?

A. Supervisors of the road and the foremen of the various sections.

Q. And you lived on the train when you were out on the road?

A. Yes, sir.

Q. Now, these estimates, you went into these yesterday. I will not take up the time to go over that again, but I understood you to say that a great many of them consisted of opinion you got from the company?

A. Profiles made by the engineers during the construction of the road and not made by anybody who was present with us at that time.

Q. You did not confer with Mr. Abrams during that time?

A. I do not recall that I saw Mr. Abrams.

Q. He was not in your party?

A. No, sir.

Q. Colonel Elliott, in your estimate, you have an item here known as the cost of wharves?

A. Yes, sir.

Q. Did you inspect those wharves?

A. Yes, sir.

Q. You have eight of them listed here south of Jacksonville, South Jacksonville, Stewart, West Palm Beach, West Jupiter, Miami, Biscayne, Eau Gallie?

A. Yes, sir, we went to all the wharves; of course we didn't measure all the wharves, we took the measurements from some information given to us, but we counted off the vents which are twelve and a half and some of them ten, there was a variety in the spacing of the piling.

Q. Now, take the Biscayne Bay, do you remember that?

A. Miami?

Q. No, the Biscayne Bay place, you have itemized that $353,996?

A. That was information given us.

Q. You didn't see that at all?

A. No, it was at Miami, wasn't it?

Q. I don't know, it was the Biscayne Bay Bridge, I don't know where it would be.

A. No, we had to take that from the records of the company; we had no way of getting at that.

Q. Now that is quite a large item of about approximately $400,000, you would not regard dredging out a distance as a part of railroad construction, would you?

A. I would, sir, if it was included under the instructions given me to take in the value of the railroad and everything.

Q. You acted solely on instructions?

A. Solely on instructions of the Trust Company in regard to the value of the railroad and its facilities.

Q. But in your experience as a railroad engineer you would not regard dredging in your estimate?

A. It may be a necessary cause, it may be very material.

Q. As a part of railroad construction?

A. Yes, sir.

Q. In this case of these various wharves that I have mentioned, you did not see them?

A. Oh, yes, sir, I saw the wharves.

Q. But the information given here is what was furnished to you?

A. So far as the dredging was concerned, yes.

Q. You know nothing about that, yourself?

A. Nothing about the dredging, no, sir.

Q. The cost of the wharf is also given here; was that taken from the records?

A. Very probably, but we checked it up as I told you by measurements and you can arrive at the average by so much per square foot or square yard, for instance the piles are placed twelve feet and a half apart, some of them are ten feet; that represents a square. Now you calculate for so many feet of piling at so much and the sills will cost so much and the planking will cost so much, spiking will cost so much and then you take the whole thing and calculate it in that way.

Q. Yes, but in this case you didn't go through those, you didn't estimate it in that way?

A. Oh, I checked up in that way, I recollect checking this wharf in Jacksonville that way and the one in Miami, I recollect checking those.

Q. But you don't recollect checking the one at Mayport, do you?

A. Mayport—the place up here at the mouth of the St. Johns River?

Q. Yes?

A. Well, yes, I checked that.

THE COURT: Q. Did you make sufficient inspection to make a careful estimate of the cost of construction of this road and its facilities?

A. I did.

(That's all.)

(Witness excused.)

Thereupon, the witness, W. L. Bragg, was recalled as a witness and having been previously sworn, testified as follows:

W. L. BRAGG.

Direct examination.

MR. ABRAMS: Q. Now, Mr. Bragg, have you tabulated the figures?

A. Yes, sir.

Q. Have you been over these?

A. Yes, sir.

Q. Now, please tell the Court what your estimate of value on this right of way is from the 306 mile post to 334?

A. I have been over this last night and this morning very carefully, and taking everything that I could think of into consideration, I made an approximate value on the right of way within the mile of the station and the approximate value between those points. At Lantana, which would be between mile post 309 and mile post 308, beyond the station limits, $100 per acre. At Hypoluxi, between 309 and 310 mile posts, $100 per acre. That is an average price that I am making here of all of these. At Pantan, between 312 and 313 mile posts, $150 per acre. At Delray, between 316 and 318 mile posts, $200 per acre. At Yamato, between 321 and 322 mile posts, $100 per acre. At Boca Raton, between 324 and 325 mile posts, $100 per acre, and between 326 and 327 and on up to 328 mile posts, $200 per acre. At Pomona, between 332 and 334 mile posts, $100 per acre. Now, I make an estimated value between those points of $40 per acre for the right of way.

Q. Have you aggregated what the entire value of that section would be, the right of way?

A. It is 12.12 acres between the mile posts on a 100 foot right of way, that covers all of that. I make the aggregate $29,824.80.

Q. Now, will you kindly aggregate the value of these lots in these different places?
A. $11,783.25, a total of $41,608.05.
Q. For this territory between these places?
A. Yes, sir.

Cross-examination.

MR. NEEDHAM: Q. You say that was 27 miles?
A. Yes, sir, 307 to 334 mile posts, 27 miles.
(That's all.)
(Witness excused.)

Thereupon the Complainant to further maintain the issues upon its part produced and caused to be sworn as a witness one A. C. Frost, who testified as follows:

A. C. FROST.

Direct examination.

MR. ABRAMS: Q. What is your name?
A. A. C. Frost.
Q. Where do you live?
A. At Dania.
Q. In what County?
A. Dade County.
Q. How long have you lived there?
A. About 11 or 12 years.
Q. What is your business or occupation?
A. Land agent and farming, selling of lands.
Q. What experience have you had in the handling of land in that territory?
A. Oh, I have had a great deal of experience with land in this State and in Wisconsin also, I have been in business for about 30 years.
Q. Are you connected with the Florida East Coast Railway?
A. Only as a land agent on commission, I sell

land for them on commission same as other companies I represent.

Q. You are not under salary by them?

A. No, sir.

Q. Were you in 1907 engaged in this business?

A. Yes, sir.

Q. Were you familiar with the values of land in Dade County from Pomona to Dania?

A. Yes, sir.

Q. What knowledge of values did you have?

A. You mean three years ago?

Q. No, it is nearly five years ago, over four years ago, in 1907?

A. What was the question?

Q. What was your knowledge of the values in that territory?

A. Well, I knew the territory and I placed valuations on it.

Q. Did you in 1907 make an estimate of the value of the right of way and of land in the different villages and stations?

A. Yes, sir.

Q. Is this your original report?

A. Yes, sir.

Q. Mr. Frost, at the time this valuation was made, was that a reasonable valuation?

MR. ESTERLINE: I object; the witness is not qualified, he just says he lives down there.

MR. ABRAMS: Well, question him then as to his qualifications; he says he had been living there thirty years, he says he has been thirty years engaged in business.

MR. ESTERLINE: Read what he says as living down there and making estimates.

THE COURT: He was engaged in the business of selling land on commission, as I understood the testimony, isn't that a fact, Mr. Frost?

A. Yes, sir.

THE COURT: I think he is qualified, it seems to

me; I shall hold him qualified unless you disqualify him on cross-examination.

MR. ESTERLINE: No, I rest on that.

THE COURT: Objection overruled, exception noted.

Q. Mr. Frost, in 1907, when you made this estimate, was that a fair valuation at that time?

A. Yes, sir.

Q. Has there been any change in values in that territory since 1907?

A. Yes, sir.

Q. To what extent?

A. It has increased.

Q. About to what extent?

A. Oh, from fifty to a hundred per cent in parts of the territory that I went through.

Q. Now, are you familiar with the values of land in Fort Lauderdale?

A. Yes, sir.

Q. To what extent has it increased there?

A. Oh, five or six hundred per cent in Lauderdale.

Q. Can you state to the Court the difference in values in that territory from what it was—is this estimate that you made of present values?

A. Yes, sir.

Q. Now, just give that one to the Reporter, will you?

A. You want me to give Lauderdale?

Q. The whole thing in that territory.

A. You want me to take the right of way from Pomona to the first villages?

Q. Whatever you have there.

A. This 100 feet in the northwest quarter of the northwest quarter of section 10, 50-42, I had that valued at $2,000 and now I value it at $8,000. And then comes here Lot 1, Block 61, northeast quarter of northwest quarter of section 10, 50-42—

MR. ESTERLINE: Your Honor, that railroad facility is not in.

A. Four years ago I valued that at $75.00, I value

it at $300 now. Then comes the station agent's house on lot 1 and 2, Block 29, I valued that at $500 at that time—

MR. BOGGS: May it please the Court, we object to the value of the station house; it is not part of the railroad company's duty to furnish house for its station agent.

THE COURT: Objection overruled, exception noted for Mr. Boggs.

A. I valued that at $500 at that time, four years ago, I put a valuation, not on the house, but on that lot at $2,000. Now, we come to Dania, station grounds, lot 100 by 1300, in the southwest quarter of section 34, 50-42 East, the railroad right of way, 2.98 acres, we valued that at $1700 four years ago, I value that now, I put a valuation on it of $2980. Now, I come to the lots where the section houses are located, I don't value the houses at all but the lots, Lots 7, 8, 9, 10, 11, 12, every one of those in Block 29, Section 34, 50-42, I valued that four years ago at $600, this time at $1800. Then the right of way through Fort Lauderdale, one mile, 11 acres, valued at $300 per acre four years ago, I value it now at $730, total of $8030. That is an average through the town, right of way outside of the town of Fort Lauderdale and from there to Pomona, the average per acre I valued at $15 four years ago, average at this time $92 per acre, $6,982. Right of way through Dania, about 7¾ acres, average value per acre, $300 per acre four years ago, now $700, total $5,425. Right of way outside of Dania, from there to Lauderdale, per acre, average $128; I valued this before at $20. Now, I start from Pomona, down from mile post 334 and 335, sections 2 to 11, Township 49, Range 42, 12.12 acres, I valued that at $15 four years ago, valuation I put on it at this time is $50 per acre, $606 total. And then there is 4.54 acres also valued at $15 four years ago, $50 this time, from mile post 335 to 336, 6.11 acres, and 14, same township and range, 7.58 acres, $15 an acre. Then from

mile post 336 to 337, which is 14.23, same township and range, 4.54, $15 four years ago, $50 now, also 4.02 acres, $15 four years ago, $50 now. From mile post 337 to 338, section 23, township 49, 42, 8.10 acres $15 then, four years ago, $50 now, total $405. From mile post 338 to 339, section 26 to 35, 12.12 acres, $15 per acre four years ago, now $50 on acre, total $606. Now, we come to the town of Progresso, that is platted since, I have a map of it here for the benefit of the parties concerned.

Q. Is that contained in your territory?

A. Yes, sir.

Q. Did that town exist four years ago?

A. No, sir. That is mile posts 339 to 340, section 35, 12.12 acres, $15 three years ago, now valued at $300, total of $3636. And additional 3.03 acres, $15 three years ago, now $300. Now, we come on to mile post 340 to 341, section 3, 50-42, 6.06 acres, $15 three years ago, now $300. Now we come to 341 to 342, through Lauderdale, Section 10, 50-42, 2.42 acres, $20 four years ago, now $1000, total of $2480. And additional 3 acres in 74, $120 four years ago, now $1000. From mile post 342 to 343, four acres, $20 four years ago, $300 now. I will show a map where all the towns connect, Progresso connects with North Lauderdale, and North Lauderdale connects with the town of Lauderdale and South Lauderdale and then Fort Lauderdale. There is a town of a six mile stretch. Now that is all plotted here, (indicating) streets laid out, shade trees planted, all through there (indicating). That is a town I plotted myself, that connects with this town up here (indicating) that connects right here with the railroad, here is the railroad here (indicating).

Q. Now, Mr. Frost, explain to the Court the cause of these tremendous increases in values in that territory.

A. It is on account of the draining of the Everglades.

Q. What has been at Fort Lauderdale, for in-

stance, what has been the development there in the matter of population of this territory?

A. Well, there are people all over on both sides of the river and buildings are going up and people are coming in and settling up the Everglades, by the canals being built.

Q. And haven't they made their homes on this land?

A. They made their homes there because they couldn't go into the Everglades and live. They made their homes there along by the railroad, that is the reason that is bought, for people to buy the land in here and they live on those lots and farm out in the Everglades.

Q. Lauderdale is close to the ocean, is it not?

A. Yes, the river connects.

Q. You call that the Inlet?

A. Yes, the Inlet, you know, into the ocean.

Q. What is that river?

A. It is New River.

Q. That goes into the Everglades?

A. Yes, sir, at Lake Okeechobee.

Q. Just east of Lauderdale, that is New River Inlet?

A. Yes, sir, that is New River Inlet.

Q. Is this a correct plat of this territory?

A. Yes, sir, that is a duplicate of the plat.

Q. Will you let me have this?

A. Yes, sir.

MR. ABRAMS: I would like to put this in evidence if the Court please.

Q. Mr. Frost, upon what do you base your estimate of the values, do you base it on any actual prices?

A. On the adjoining property being sold, of course, that is the figures I base it on.

Q. Now, can you say whether or not since this enormous development took place the East Coast Railway has acquired any more lands in this territory, bought any more?

A. I don't know.

Q. You don't know?

A. No, I don't know.

Q. Now, in making these estimates of the present values in those lots in the villages and towns, did you also base them on selling price in those villages and towns?

A. Yes, sir.

Q. Do you consider your estimate, the present one, moderate and reasonable?

A. I consider it conservative, it is rather low, you know, by the way that property is selling.

Q. Well, there is great activity in real estate there, is there not?

A. Yes, sir.

Q. Are you personally familiar with all this, about 11 or 12 miles of territory?

A. Yes, sir.

Q. Are you thoroughly familiar with that territory?

A. Yes, sir.

Q. Does your real estate business extend through that territory?

A. No, sir, not any further than to Lauderdale.

Q. Fort Lauderdale?

A. Fort Lauderdale and Dania, that is my territory.

Q. Have you sold any land in this territory in the last four or five years?

A. You mean the territory I represent?

Q. Yes?

A. Yes, sir. I have sold considerable.

Q. In these estimates I think you said you had not included any buildings, nothing but the lands?

A. No, sir, no buildings.

MR. ABRAMS: I would like to offer this in evidence in connection with this testimony.

Cross-examination.

MR. BOGGS: Q. Mr. Frost, you are personally interested in the town of Lake View?

A. Yes, sir.

Q. You are the owner of that?

A. Yes, sir.

Q. What is its population now?

A. There is, I think, about six houses built now. It is recently started; I sold the ten acres east of the town for $2,000 cash.

Q. How many miles of solid town blocks have you valued in this estimate here commencing at Progresso and going down to Dania?

A. Well, I have not figured that up, but you can figure it.

Q. How far is the north line of Progresso from the town of Fort Lauderdale?

A. That is about a mile, I think, or a little better. That commences about here (indicating), at that railroad there and it goes over this way.

Q. That makes then about six miles of town lots along the railroad track, does it not?

A. I think pretty near.

Q. This plot extends out some distance on both sides of the railroad track, does it not?

A. Yes, sir.

MR. ABRAMS: I would like to offer this also—

MR. BOGGS: Then, Mr. Frost, this city as laid out on paper is pretty nearly the size of Chicago, is it not?

A. Not quite, it may be the size of Chicago, you know, a good many years ago, but there is a station there and saw mill and side track.

Re-direct examination.

MR. ABRAMS: Q. Mr. Frost, you have testified from this map, so that the Court may be advised that this territory you have been describing is in it?

A. Yes, sir.
Q. Well, this is the Atlantic Ocean? (Indicating.)
A. Yes, sir.
THE COURT: The map shows for itself.
Q. This Progresso is now included in this?
A. Yes, sir. That connects with Fort Lauderdale.
Q. Does this map include it?
A. Oh, no, sir, that is a different map of Progresso.
(That's all.)
(Witness excused.)

Thereupon, the Complainant to further maintain the issues upon its part produced and caused to be sworn as a witness one J. C. Hancock, who testified as follows:

J. C. HANCOCK.

Direct examination.

MR. ABRAMS: Q. What is your name?
A. J. C. Hancock.
Q. Where do you reside?
A. At Stewart.
Q. What is your business or occupation?
A. My occupation is or occupations rather are various; I am a grower, to start out with, and have been dealing in real estate and insurance and am also in the employ of The R. G. Dun & Company and for the East Coast Railroad from Miami to Jacksonville.
Q. State to the Court your experience in real estate values in this territory, in the territory beginning at St. Lucie River to West Jupiter?
A. You mean as to increase?
Q. As to knowledge of values originally, your knowledge of values?
A. My knowledge of the values of that land has been arrived at by the actual sales, not very many,

however; our locality is not in what might be called the boom section of Florida. We have no extraordinary boom in our locality.

Q. Now, you made an estimate of the values in this territory in 1907, did you not?

A. Yes, sir.

Q. Well, now, what knowledge have you of values of real estate in that territory that enabled you to make this estimate?

A. Well, I sold some of that land myself.

Q. In making that estimate how did you arrive or how did you find the values?

A. By personal inspection and going over the lands.

Q. How did you ascertain the price and value or the selling price?

A. What I based it on the price that adjacent land was selling for at the time.

Q. Well, did you consider that a reasonable one at that time?

A. I did, yes, sir.

Q. Now, Mr. Hancock, in that territory, has there been any decrease or increase in values since 1907?

A. Well, I should say that there has been an average increase of from 35 to 40 per cent.

Q. What has caused that increase?

A. Well, I couldn't attribute it to any particular condition, it is combination of circumstances; we have had a rock road built through that territory, that has added considerable to the values and the natural immigration to Florida along the Coast and settling it up of the territory has increased our locality along such lines as I have indicated.

Q. How close is your line to this boom section? That section that has increased so largely?

A. Why, we are considerably north of it.

Q. You say from 35 to 40 per cent increase on the estimate you have made?

A. I should say about that. In other words, such land as I valued at that time at $10 an acre, is sell-

ing now at $15 to $20 an acre. Take for instance, the grant known as the Anderson Grant, that has been subdivided—purchased outright since this estimate was and divided into tracts of 10, 20 and 30 acre tracts. I suppose that land was purchased for around $5 or $6 an acre and there was several thousand acres in the tract and that land is being sold out of that tract to $20 an acre and the understanding was, or at least the statements made by the agents handling it, I haven't sold any of that land, but the agents residing in my town have sold it, and their statement is that after the first 1000 acres is sold, they contemplate advancing the price $10 per acre.

MR. BOGGS: May it please the Court, it seems to me that ought to be stricken, the statements made to him by the agents.

THE COURT: That is a part of the current prices of a market?

A. Everybody knows that.

Q. Do you consider this increase of 35 per cent in that territory a reasonable one?

A. I do, sir.

Q. Are you in the employ of the Florida East Coast Railway Company?

A. No, sir.

Q. Do you sell any lands for it?

A. Only on a commission basis.

Q. Just like you would for anybody else?

A. Yes, sir.

MR. ABRAMS: I offer this in evidence as to the original and the increased values.

THE COURT: What County is that in?

MR. ABRAMS: When that estimate was made it was Dade County, now it is Palm Beach County.

Cross-examination.

MR. ESTERLINE: Q. If a request for a report of mercantile agency is made to R. G. Dun & Company

and you make that report of a man who owns this real estate, do you use the same estimates as you use here as giving a statement for a basis for credit?

A. We use the same estimate that is furnished to us by the owners of the land, regardless of who they are, and then we qualify that statement by saying that the values on this land speculative.

Q. What do you mean by speculative, as to the value he fixes on it?

A. As to the value he fixes on it; we don't fix the value at all.

Q. Then these values you state here are speculative values, are they?

A. Well, no, these values are based on actual sales.

Q. Why would you not make the same estimate for him on the knowledge of actual sales that you make on this estimate here?

A. Why, the mercantile agency is not in the real estate business. In fixing the values of land, it is not our business to do so.

Q. But it is your business when inquiry is made to report the financial status of that individual, is it not, as you know it and can learn it?

A. Yes, sir.

Q. And it would be your business to report any real estate that he owned, would it not, in order to give a correct report?

A. Yes, sir.

Q. And it would be your business in making that report of that real estate to report what its value was as you knew it, would it not?

A. If we are asked to furnish the value of land we would go to the records and find what is it estimated at, find what it is assessed at and then from the assessed valuation and from the statements that we make as to the speculative values of the land, they can form their own conclusions.

Q. So that in making your estimate or in making the value of land as a basis for credit for the

mercantile agency, you use a different basis than you use here in this case; you did not go to the records to see what it was assessed at or what it was valued at, did you?

A. Why, certainly not. I was valuing the land at the price it was bringing in the market.

Q. But you didn't do that for the man as a basis for credit?

A. Certainly not.

Q. Why do you make the distinction?

A. Why there is every reason in the world. How do we know that the man is going to have any sale for the land, we have to know positively that the man had inquiry for his land or had been offered certain prices before we can fix it. If a man has sold a certain piece of property, we state it, state the price at which he sold it and then fix the value on it, otherwise it is speculative.

THE COURT: I think you are getting a little far from the question here.

MR. ESTERLINE: All I want is to test the witness on the question of values; he says he is a representative of the R. G. Dun & Company.

THE COURT: He has stated that these values as given here are based upon the actual sales; I think you have gone about as far in that direction as you are allowed to go.

MR. ABRAMS: Q. You testified that the estimate you made in 1907 was a moderate estimate of values then?

A. Very conservative as I reported it.

Q. And the estimate, now, it is an average of about 35 per cent increase?

A. 35 to 40 per cent increase, in some instances it has been doubled.

MR. NEEDHAM: There is no misunderstanding about that, the witness has stated in detail about that.

(Witness excused.)

Thereupon the Complainant to further maintain the issues upon its part produced and caused to be sworn as a witness one Wallace R. Moses, who testified as follows :

WALLACE R. MOSES.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. Wallace R. Moses.

Q. Where do you reside?

A. West Palm Beach, Florida.

Q. How long have you lived there, Mr. Moses?

A. Eighteen years, over eighteen years.

Q. What is your business or occupation?

A. Real estate and fire insurance and fruit grower.

Q. Are you employed by the Florida East Coast Railway Company?

A. Only in the way of selling their lots on a commission, the same as I do for others.

Q. You receive no salary?

A. No, sir. I do a general real estate business and handle their lands the same as I handle the lands for others.

Q. You handle lands for individuals, too?

A. Yes, sir.

Q. You do a general real estate business?

A. General real estate business.

Q. In 1907, was there any County known as West Palm Beach?

A. No, sir.

Q. What did that territory form a part of?

A. Dade County.

Q. How did you become familiar with the values in that territory described in your report?

A. Why, by traveling over it and by selling lands in the neighborhood of the railroad.

Q. Prior to 1907 how many years had you been engaged in that territory in the handling of real estate?

A. Fourteen years, I think.

Q. Did you make an estimate of the values of real estate in that territory some time the latter part of 1907?

A. Yes, sir.

Q. At whose instance did you make it?

A. Yours.

Q. How did you make that estimate, Mr. Moses?

A. Well, by riding over the road. I made frequent trips on it on my own business and I made special trips to refresh my memory on the location.

Q. What was your knowledge of the values of those lands that you estimated, your personal knowledge, based on?

A. Well, from sales.

Q. Those particular lands, do you know them?

A. And sales of adjoining lands, I should say so.

Q. How did you estimate the value of the right-of way?

A. Why, by the value of lands in the neighborhood, in the immediate neighborhood.

Q. Since you made that estimate has there been any change in the values of that territory since—that you estimated?

A. Yes, sir.

Q. To what extent?

A. Well, it has varied, it runs from nothing up to six and seven hundred per cent in certain localities.

Q. State to the Court where they have increased, the location of the increases and if any decrease, where they have been.

A. Take it by item, itemized?

Q. Yes, for convenience.

MR. NEEDHAM: If your Honor please, I don't think it is necessary to read from the copy, it seems to me that is hardly necessary.

THE COURT: Q. You have in the report in your

hands which you made in 1907, you have stated just the different pieces of property that you valued?

A. Yes, sir.

Q. You have made in that connection an estimate of the other value?

A. Of the present value.

Q. Of the value at that time?

A. Yes, sir, the value at that time.

Q. Same suggestion with regard to the paper there before you?

A. Yes, sir, I have the acreage in most cases.

Q. That report and estimate which you made during the time was a correct estimate and appraisement of the property?

A. Yes, sir.

Q. Between what points did you make this estimate?

A. From Jupiter down to the 306 mile post.

Q. That is how many miles?

A. Twenty-three miles.

Q. What is the aggregate value you put on the property at that time?

A. $126,554.00 at that time.

Q. What is the aggregate value you place on it now?

A. $178,041.00, a fraction over forty per cent.

Q. Did that include the right of way and everything?

A. That included the right of way and station grounds and lots used for railroad purposes, except the agent's house at West Palm Beach.

Q. Does that include any buildings?

A. The value of no buildings are included.

Q. Now, Mr. Moses, does that cover the railroad properties east of Lake Worth?

A. Yes, sir. That is on the east side of Lake Worth at Palm Beach, that covers the station house and railroad out on the east side of Lake Worth.

Q. Now state to the Court where the greatest increase has been in values?

A. At West Palm Beach.
Q. West Palm Beach is now the County seat?
A. Yes, sir.
Q. Of the new County?
A. Yes, sir.
Q. Has there been much development from the sale of lands?
A. Yes, sir, considerable.
Q. Upon what do you base that present estimate of this increase of about forty per cent?
A. Actual sales in the vicinity.
MR. ABRAMS: We put this in evidence; it is a copy of the other with the increase marked upon it.
Q. Is this territory you are inquiring about near the vicinity of these drainage operations?
A. Well, yes and no, both. We have a canal proposed, a proposed canal which will enter Lake Worth five miles south of West Palm Beach provided a sufficient amount of money is subscribed by the citizens of West Palm Beach and Palm Beach County.
Q. Then this increase is not due to the drainage operations that has been further north?
A. No, because this proposed canal has only come on within the past few months.
Q. Has there been much increase in the population and settlement of that territory?
A. Yes, sir, to a certain extent, yes.
Q. And greater activity in real estate than when you made the estimate in 1907?
A. Yes, sir; vastly more.

Cross-examination.

MR. BOGGS: Q. Mr. Moses, will you examine your estimate over and tell the Court about what the acreage owned by the railroad company in West Palm Beach is; you need not give it accurately but just approximately?

A. Well, can I take the testimony that I gave before to refresh my mind; the railroad yard has it cut up so that I really couldn't say without figuring it and I gave it in this former report and I made an estimate at that time. As I recollect it was somewhere about fourteen acres, I think, in the railroad yard, that is side-track properties and main-line and oil house and water tank and various other buildings. Now, I don't want to put that figure as absolute because it is my recollection going four years back but it is somewhere in that neighborhood.

Q. Now, Mr. Moses you say that this property, you stated in your direct testimony that this property was used for railroad purposes, do you know for what purposes the railroad is using it?

THE COURT: Mr. Boggs, is it worth while to cross-examine for that purpose, he is not put on the stand for that.

MR. BOGGS: All I want to show is that he is not an expert witness on that point; he made the direct statement that they were used for railroad purposes.

Q. Now, on the east side there where you say in your Exhibit that the railroad company has seven acres, that is merely a spur track connecting with the hotels, is it not?

A. Yes, sir, a spur track from the main-line over to the "Breakers" past the "Poinciana" and the station buildings and the side track; on the east side of the Lake near the Lake.

Q. Then they have another station on the west side?

A. Then another station at West Palm Beach.

Q. There is a station at the Poinciana?

A. During the winter season only, during the times the hotels are open.

Q. During the tourist season the trains go down there to the Poinciana as a regular station?

A. Yes, sir.

Re-direct examination.

MR. ABRAMS: Q. Do you know whether or not the Florida East Coast Railway has had to since you made that estimate purchase any more land in that territory?

A. For what purpose?

Q. For any purposes, for railroad purposes, do you know of your own knowledge?

A. No, sir, I don't think I have any knowledge of that.

(That's all.)

(Witness excused.)

Thereupon the complainant, to further maintain the issues upon its part, produced and caused to be sworn as a witness one Courtland Buckman, who testified as follows:

COURTLAND BUCKMAN.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. Courtland Buckman.

Q. Where do you reside, Mr. Buckman?

A. Jacksonville.

Q. What is your profession or occupation?

A. Real estate broker.

Q. How many years have you been engaged in that business?

A. About eighteen years.

Q. What is the territory that you operate in principally?

A. Well, of course, Jacksonville and vicinity, and throughout the State.

Q. During the eighteen years you have been engaged in the real estate business in Jacksonville, have you been able to learn the values of property

in Duval County in which Jacksonville is situated?

A. I think so, sir.

Q. In the latter part of 1907 or the early part of 1908, did you make the valuations of lands and right-of-way of the Florida East Coast Railway in Duval County?

A. I did.

Q. Were you assisted by anyone?

A. Mr. Smith assisted me in part of it.

Q. How did you make your valuations, Mr. Buckman?

A. By comparison with adjacent property, what we were paying for it and what it was being sold for.

Q. Did you personally examine the land?

A. Yes, sir.

Q. Your territory began where?

A. At Jacksonville and went to the County Line of Duval County and take in the Mayport division of the East Coast Railway down to Mayport which goes through Pablo Beach, Atlantic Beach and East Mayport and Mayport.

Q. Did you go over that property in person?

A. Yes, I had been over it repeatedly because when the railroad company acquired the property from Jacksonville to Mayport I purchased it for them.

Q. Now, I find here, a copy of the report you made at that time, this is a copy of it; was that a fair valuation at that time?

A. I considered it fair, indeed, and a little below the market price.

Q. Since you made that estimate of values has there been any change in the values of those properties that you appraised in 1907 or 1908?

A. Yes, sir.

Q. Has it increased or decreased in value?

A. It has increased in value.

Q. Has there been much increase?

A. Well, beginning at Jacksonville, taking the terminal properties—

Q. I find here—now state where the increase is?

A. Beginning at Jacksonville, what we call the Jacksonville Terminal Company's property, that has increased fifty per cent and the property on the south side of the river, the terminal property—

MR. BOGGS: Q. That Terminal property is not the property of the East Coast Railroad?

A. Well, they are interested in it.

MR. BOGGS: My understanding of that is the Florida East Coast Railway owns stock in the Terminal Company, the value of the Terminal Company ought not go in the report as part of the testimony.

A. That was my original testimony.

MR. NEEDHAM: We should object to the value of any other corporation simply because they hold stock in that corporation, stock is one thing, it is not a part of the physical property of the road.

THE COURT: It seems to me the way for you to enter your objection is for me to take the testimony and the objection will restrain it from improper use. Exception noted for the respondent.

Q. Now have you—

A. The property on the south side of the river—

Q. That is not terminal property?

A. That is the individual property owned by the East Coast Railroad, their water front property there, I think, has increased at least fifty per cent.

Q. Where is that water front property?

A. That is right opposite Jacksonville, it is right in here (indicating), the ferry comes across and there is their waterfront property in here back in this shape. The valuations here I consider have increased fifty, it is valued here at least fifty per cent, as it goes back it diminishes in the increase of value in the last four or five years and the right-of-way as it goes on down to Mayport and including Mayport has increased at least twenty-five per cent.

MR. NEEDHAM: Q. How far is that?

A. Mayport is about twenty-one or twenty-two miles from Jacksonville.

Q. Now, are these the lands?

A. The lands in red here all belong to the road, from the same line and then it comes back and then it takes in this point here, back in this way (indicating), this is the County Road leading through here, they own this triangle in here, they own up in here, you see, it is marked in red and up in here is the right-of-way.

MR. NEEDHAM: Q. That is all described in your statement?

A. That is all described in the statement; I put the value on this by lot and block where it is platted, where it is not, in lots and blocks, I took it as a whole.

Q. Now, let's take the right-of-way as I find here, a tabulation of the estimates of the aggregate amount of the railroad to the Duval County Line from mile post one to eighteen to the St. Johns County Line, the aggregate of that right-of-way is $10,691.50; can you say what about the average increase has been on that eighteen miles of road?

A. Well, I say it has increased twenty-five per cent, I think easily twenty-five per cent.

Q. Now, I find on the Mayport division from mile post 1 to mile post 25 at Mayport a total of $16,296.30, when you made this valuation, now what increase do you put on that valuation?

A. Practically the same, twenty per cent.

Q. Twenty-five per cent?

A. Yes, sir.

Q. Now, let's take up those lots used for railroad purposes which you have appraised, I say used for railroad purposes because I expect to show it is used for that.

A. You mean in South Jacksonville?

Q. Yes, sir? Now state the increase in value you placed on this South Jacksonville property?

A. Well, as I stated, everything on the waterfront and back from the waterfront described by lot and block for two or three blocks would compare fifty cent increase, back of that would bear thirty per cent increase and then back into the right-of-way twenty-five per cent.

Q. Now, have you been able to figure out in dollars the increase in South Jacksonville over that estimate of 1907?

A. I didn't carry it out to totals, no, sir, but it is nearly a matter of calculation.

Q. Now, these lots you have in your report here, where are they, on what stream do they front, those lots that you say have increased fifty per cent?

A. Well, the water front lots and the main part of the terminal or yards front on the St. Johns River.

Q. How far opposite the built up portion of main Jacksonville are they?

A. They are directly opposite.

Q. You made an estimate of fifty per cent increase in valuation since then? Is that estimate an excessive or moderate one?

A. No, sir, it is not excessive. That is what you have to pay for that property now.

Q. Do you think if the railroad company had to buy that property they could buy it at your present valuation?

A. I don't think they could.

Q. Has Jacksonville increased very much in population in the last few years?

A. Yes, sir.

Q. Still increasing?

A. All the time.

Q. Now, I find here an estimate which you made of $150,000 for one tract, what do you estimate that at now?

A. Fifty per cent increase.

Q. That would be $220,000?

A. Yes, sir.

Q. Do you think that a moderate increase?

A. Yes, sir.

Q. I want you to show to the Court exactly where that tract is situated?

A. That is the property right in here, right in this shape (indicating).

Q. That is the St. Johns River, sir?

A. Yes, sir.

Q. Right opposite the heart of Jacksonville?

A. Right opposite Jacksonville.

Q. You place a present valuation on that property of $220,000, do you think the railroad company could buy that property to-day for $220,000 if it was held in the hands of others?

MR. NEEDHAM: That is not the question, if it was not sold the railroad would not be there, the property would not be worth what it is.

THE COURT: He has answered the question.

Q. Do you think that a moderate estimate?

A. Yes, sir, I do.

Q. Mr. Buckman, did you make this valuation from your personal knowledge of the valuation of lands over there or just from what somebody told you?

A. Oh, no, I had to buy and sell lands there, it is based upon the market value of what you would have to pay for it if you bought it to-day, not any particular land, but anything in that vicinity.

Q. I find you have an increase of value in the Mayport property of twenty-five per cent, where is Mayport situated?

A. At the mouth of the St. Johns River.

Q. Mayport is the terminus of the division, do you know what there is there?

A. Yes, sir.

Q. What?

A. They have docks and elevators, yards.

Q. In making these estimates have you considered the value of the buildings on those lands?

A. I have not valued the buildings on any of this

at all, it is on the land without regard to buildings or any improvements of any kind.

Q. You place an estimate of an estimated increase of twenty-five per cent on this Mayport property, on what do you base that increase of twenty-five per cent?

A. From what you would have to pay for land in that vicinity at Mayport at the present time.

Q. Mr. Buckman, at whose instance did you make these valuations four or five years ago?

A. I think I made them for you.

Q. You say you were assisted by Mr. Jerry Smith?

A. Yes, sir.

Q. Now, will you kindly make a tabulation of those aggregates so that we can have it?

A. Yes, sir.

(Witness excused for the present.)

Thereupon the complainant, to further maintain the issues upon its part produced and caused to be sworn as a witness one Jere S. Smith, who testified as follows:

JERE S. SMITH.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. Jere S. Smith.

Q. Where do you live?

A. South Jacksonville.

Q. What is your occupation, Mr. Smith?

A. Real estate.

Q. How many years have you been engaged in the real estate business of Duval County?

A. Twenty-five years.

Q. You have been residing in South Jacksonville, where is your principal office?

A. 136 East Bay Street, Jacksonville.

Q. In the city proper?

A. In the City of Jacksonville.

Q. During that twenty-five years experience in the real estate business have you learned the value of real estate in Duval County?

A. I think so, sir.

Q. From what do you derive your knowledge of values in Duval County?

A. Well, from what sales that have been made, that I made and prices asked.

Q. Are you in the employ of the Florida East Coast Railway?

A. No, sir.

Q. Are you an agent for them for the sale of any land of theirs?

A. No, sir.

Q. Did you in the latter part of 1907 or 1908, the latter part of 1907 or the early part of 1908, value certain properties of the railroad in Duval County?

A. Yes, sir.

Q. Who assisted you?

A. Courtland Buckman.

Q. You made a valuation at that time?

A. Yes, sir.

Q. Is this a copy of your valuation?

A. Yes, sir, that is the property we appraised.

Q. Did you consider that a reasonable valuation at that time?

A. Yes, sir.

Q. How did you make that valuation?

A. Well, I figured at the prices that are now asked for property and the value of property as we knew it.

Q. I mean at that time, in 1907?

A. Well, about the same way.

Q. Did you you go over the property in making values?

A. Yes, sir.

Q. Were you personally familiar with any part of that property?

A. Yes, I think I am familiar with all of it.

Q. Now, since then, has there been any increase in values in that territory?

A. Very large increase.

Q. You and Mr. Buckman were together and investigated and considered the increase together?

A. Well, yes, we talked about.

Q. On what do you base that increase, Mr. Smith?

A. Well, on prices at which property is held at now.

Q. Has there been much development in South Jacksonville in the past five years?

A. Very great development.

Q. It is getting to be a very big town, isn't it?

A. Yes, sir.

Q. You have heard Mr. Buckman testify?

A. Yes, sir.

Q. State to the Court to what extent you agree with him or to what extent you differ from him in your estimate?

A. Well, I think about the water lots, I think he put the water lots at a very low increase, more than I should, I say it should be at least seventy-five per cent. I can show you by recent sales made in the last few months right along the line of the railroad property. For instance, there is a piece of property that I sold three years ago for $3,200, lot 42, in Block 36—

MR. NEEDHAM: Q. Where is the railroad?

A. There is the railroad coming through here (indicating).

Q. Where is the railroad property?

MR. ABRAMS: A. Right opposite the heart of Jacksonville.

MR. ABRAMS: Q. How does this property you are describing now compare to the City of Jacksonville?

A. Well, it is right opposite, here in the bridge and it is right here, opposite.

Q. Now, go on.

A. For instance, I bought those lots here for $3,200 three years ago. I sold them last October to

some people for $8,000. This lot here I could have bought two years ago, this lot 31, Block 21, I could have bought two years ago for $2,500, I sold it in October, a little after I sold these for $4,500. Now all these all these lots have increased in the same ratio almost.

Q. Then you don't think the estimate of Mr. Buckman an excessive one?

A. No, on the water lots, I think it is low.

Q. Now, with regard to this tract that you both assessed at $150,000 four or five years now ago, what is your opinion to-day of the increase in value of that property?

A. Well, I should say I don't regard that that property has increased quite as much as these front lots.

Q. About what percentage do you think it has increased since that time?

A. Well, say sixty per cent.

Q. With regard to the increase testified to by Mr. Buckman at Mayport along the line of the Mayport town what have you to say as to that, Mr. Smith?

A. Well, you mean the right-of-way from South Jacksonville to Mayport?

Q. No, taking lots first?

A. Well, I should say twenty-five per cent.

Q. Now, take the right-of-way from Jacksonville, at mile post 1 to the St. Johns County Line, at mile post 18, which I find here marked at aggregate of $10,691.50, what do you say of the aggregate increase would be?

A. I should say about twenty-five per cent.

Q. Well, now take the Mayport division from mile post 1 to mile post 25 at Mayport, it was aggregated then at $16,696.30 what is your estimate to-day?

A. Well, I think twenty-five per cent on that would be a moderate valuation.

Q. Has there been much activity on that Mayport division, from Mayport to Jacksonville?

A. Well, a good many sales made and improvements made.

(That's all.)

Cross-examination.

MR. NEEDHAM: Q. What is this property used for in here, I mean outside of railroad property?

A. Well, stores all along there (indicating).

Q. It is all business property of South Jacksonville?

A. Yes, sir, buildings all along here, stores (indicating).

Q. You know of sales having been made in here recently?

A. Yes, sir.

Q. In this region?

A. Yes, sir, I sold a lot there yesterday, that lot 17, I sold that for $850.

Q. What is the size of it?

A. Fifty by one hundred.

Q. What is this property used for over here?

A. They propose to bulkhead that and fill it in and sell it for residences.

Q. That is residence property then?

A. It has recently come into the market as residence, it could also be used for business property, it is marshes and sand now, it can be made valuable, you will have to bulkhead and pump sand in it.

Q. What is that property here that adjoins it, is that residence property?

A. Yes, sir, residences all around here.

Q. It is the growth of the residences and the development that has brought that into the demand?

A. No, I think it is the water front situation, it is almost impossible to obtain water front lots.

Q. Is this water front over here on deep water the same as this?

A. No, it is not as deep over here, you would have to pump that out, make a channel there.

Q. It is a different character of property from this?

A. Well, it is water front.

Q. Well, I say it is a different character of property, is it not?

A. Yes, sir.

(That's all.)

(Witness excused.)

Thereupon the complainant to further maintain the issues upon its part produced and caused to be sworn as a witness one E. T. Conrad, who testified as follows:

E. T. CONRAD.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. E. T. Conrad.

Q. Where do you reside, Mr. Conrad?

A. Daytona, Florida.

Q. What County?

A. Volusia County.

Q. What is your business or occupation?

A. Real estate.

Q. How long have you been engaged in that business?

A. Five years.

Q. Were you engaged in that business in 1907 and 1908?

A. Yes, sir.

Q. How long have you lived in Volusia County?

A. About eighteen years.

Q. Now, did you make valuation of lands in Volusia County in the latter part of 1907 or the early part of 1908?

A. In 1908, I think, yes, sir.

Q. Do you recall at whose instance you made that report, that appraisal of values?

A. Why, I think Mr.—I don't recollect whether it was you or some of the officials of the road. I know you paid me for it.

Q. Were you familiar with the values of property in Volusia County?

A. I am quite familiar with most of it, yes, sir.

THE COURT: What County is that?

A. Volusia.

Q. From what did you derive your knowledge of values at that time?

A. I first went over the county records and got all the sales that had been made for the past year in the County, and confirmed the prices where I could and did in a great many cases.

Q. In making this estimate of values, did you go over the land itself?

A. I went over all of it.

Q. Were you assisted by any one?

A. I had some assistance.

Q. From whom?

A. E. F. Oates helped on the County records and looking over the sales, hunting up sales, and I also got some assistance in New Smyrna and at Ormond by residents that owned property there.

Q. Did you consider your values at that time just?

A. I think they were right, as near as I could get it.

Q. That is your original report, isn't it?

A. That is the original report.

Q. Since that time has there been any change in the values in Volusia County?

A. There has.

Q. Has it increased or decreased in value?

A. It has increased largely.

Q. Can you give approximately your idea of the increase in values, the percentage of increase in values throughout that territory?

A. Well, the lands outside of the towns have grown double, all the timbered and cut-over lands have grown double since that time.

Q. How about town property?

A. New Smyrna and Daytona has increased largely.

Q. Those are the two principal towns?

A. Yes, sir; those are the principal towns.

Q. How about other towns, such as Oak Hill and Ormond?

A. Well, I don't figure they had increased much as town property.

Q. But taking the territory as a whole, about what percentage of increase would you say for the entire territory?

A. Fully fifty per cent.

Q. Can you state the causes that led to this increase of value?

A. Immigration, and demand for farming lands has caused large increase, and of course Daytona and New Smyrna are tourists towns, and are growing rapidly.

Q. Daytona is quite a good sized town?

A. Yes, sir; Daytona is a good sized town.

Q. About what is the population of Daytona?

A. Well, the last census gave us a little over three thousand, that does not include the tourists, counting that, we have over ten thousand people there in the winter months.

Q. Smyrna is another tourist town?

A. Smyrna is a large tourist town, although they are both good truck growing towns, have excellent land around both of the towns: the best land in the State lying along that coast.

Q. Upon what do you base your estimate of the increase of value?

A. The demand for property.

Q. Have you sold lands yourself of this increase?

A. Yes, sir: I have.

Q. When you say cut over lands have doubled in

value, you mean the lands the timber has been cut off?

A. Yes, sir; land timber has been taken off of. There has been a great demand for such land.

Q. You say it has doubled in value notwithstanding the timber has been taken off?

A. It has been doubled in value for that kind of land, it is not worth double what it would be with the timber on it for that purpose, but it has been selling for more than double, at the time the inventory was taken.

Q. With the timber off?

A. With the timber off.

Q. In making those estimates, did you consider the buildings at all?

A. No, sir; no buildings at all, no improvements of any kind.

MR. ABRAMS: I offer this in evidence.

MR. NEEDHAM: How many miles does this cover?

A. About ninety miles, as well as I remember now, that is approximately, I can tell by this.

Cross-examination.

MR. ESTERLINE: Q. Mr. Conrad, how long were you in making this examination?

A. I expect we worked about thirty days on it.

Q. And how much of a strip does it cover?

THE COURT: He just said about ninety miles.

A. About ninety miles.

Q. You were thirty days in making the investigation?

A. About thirty days.

Q. Now approximately in acreage, how much would this amount to, have you added it up here?

A. No, I have not added it up, but I would judge about ten or even hundred acres, probably.

Q. Not more than that?

A. It might be more or less, but I would say that that would not be very far from it.

A. Are these figures here your figures, these pencil figures, or were they furnished to you?

A. No, I don't know anything about those figures there.

Q. Well now, when you made this investigation, was the description of this property furnished to you?

A. Yes, sir.

Q. And you took that description and made your investigation?

A. I confirmed it with our county and city maps.

Q. You know whether or not this pencil memorandum was the description furnished you?

A. I do not.

Q. You don't know?

A. That typewritten one was.

Q. You don't know where this came from, the one that is attached?

A. I don't remember whether I had that or not. It is not the one I used because there is nothing carried out on it.

Q. Now, you say that the land has increased fifty per cent as a whole, you think?

A. I do.

Q. That is due largely to these places being tourists cities?

A. In the cities, yes, but at the same time it is due—

Q. Now, does real estate fluctuate a great deal in value?

A. It has not since I have been there.

Q. How long have you been there?

A. I have been sixteen years in Daytona. It has been gradually increasing.

Q. The most increase has been since 1908?

A. No, it was increasing gradually all the time.

Q. And that was in 1908—

A. In May, 1908, I think, about that time.

Q. It was in May, 1908, that you made the investigation?

A. As near as I can recollect now.

Q. And you have been there eighteen years?

A. Sixteen years in Daytona.

Q. It has been fifty per cent increase in that time?

A. No, that part of it, part of the property has not increased, but that particular section, that land back from the river it has increased more than any other, as the town grows it has got to grow that way.

Q. You say that the town has about three thousand inhabitants in the summer time?

A. Yes, sir.

Q. Now, if it was by reason of any of these other places building up so as to become tourist towns, you would not have so many people to rely on?

A. Oh no.

Cross-examination.

MR. NEEDHAM: Q. Is this your report here?

A. I think it is, but I would not swear to it.

Q. You have not aggregated the amount of your calculation for that ninety miles?

A. I did go over it.

Q. You make it about one hundred and eleven thousand, with your figures added?

A. I would not swear to those figures accurately, I would want to go over that with an adding machine.

Q. What is farming land selling for in that county?

A. From twenty to one hundred dollars an acre. Some of our best hammock land brings one hundred dollars an acre.

Q. That entirely along the line of the road?

A. Most of the hammock land is along the line of the road, it is bound to be it is near the coast.

Q. How far would that extend each side of the right of way, these values you have just given?

A. Well, it extends through the hammocks, you know, and they vary in width, they are not straight

across, you know, and you may get a streak of pine land between two hammocks, as we find down there.

Q. And along the road the farm lands would run as high as one hundred dollars an acre?

A. Some of them sell for that. Some of the hammock land sell up to one hundred dolars. Anywhere from fifteen and twenty dollars up; from fifteen or twenty dollars an acre to one hundred dollars an acre.

Q. I mean outside of the corporation?

A. Outside of the corporation, but you could not get very far from a corporation along the coast in that county, because the towns are pretty thick through there.

Q. You don't know how much of this ninety miles is through farms?

A. Why, I consider it is all through farming land.

Q. I mean outside of towns?

A. The most of that right of way is through flat woods, just cut over farming land, wherever it is dry enough to use, and some of it is scrub, but not much, some high rolling land from Lake Helen.

Q. How wide is the right of way?

A. It varies from fifty to one hundred feet, it is not the same.

Q. You know the total number of acres in that right of way?

A. I never did figure the total number of acres, the acreage is all on there.

THE COURT: The acreage appears in the report which you made in 1908.

A. The acreage is all on that report.

Re-direct examination.

MR. ABRAMS: Q. Mr. Conrad, you say that the population of Daytona in the winter is probably ten thousand, are not a large number of that winter population, do they not own their own homes?

A. A great number of them.

Q. Now, what is there as New Smyrna outside of its being farming country and tourist town?

A. Why, it is fine farming land and orange growing.

Q. Isn't it the junction?

A. It is the junction of the Titusville Branch they call it now.

Q. Have they got a yard there?

A. Yes.

THE COURT: Railroad yards?

A. Railroad yards.

Q. And shop?

A. Side tracks and some repair shops, coal shed and such things.

Q. I think you have testified that you only valued the land itself and not the building?

A. That is all: only the land.

Q. Do you know if the railroad company has put any improvements on its territory in that place in the last twelve months?

A. Oh, yes, they built a new station in there; they have made big improvements in there.

Q. Do you know whether or not at Daytona they have recently or within the last year or so, acquired additional land there?

A. They bought lands there this fall for station purposes.

Q. That is not included in your valuation at all?

A. No, sir; not included.

Re-cross-examination.

MR. ESTERLINE: Have they built the station?

A. They have not.

MR. ABRAMS: I move to strike out that, Your Honor, it is merely expression of opinion; he says they bought land for station purposes.

THE WITNESS: They made us a proposition, asked

our real estate office to secure an option on certain lands and made a proposition to the City Council, of which I am one, that they would build us a new station and furnished plans for it, best station on the line of the road south of Jacksonville, if we would close up one street. So far we have not closed up the street, but they afterwards ordered us to buy the land.

THE COURT: I think I will let that go in.

MR. ESTERLINE: Exception.

THE COURT: Exception noted.

MR. ABRAMS: Haven't they enlarged the station?

A. They have enlarged it; they have added about forty feet to it.

(Witness excused.)

Thereupon the witness Courtland Buckman was recalled and testified as follows:

COURTLAND BUCKMAN.

Direct examination.

MR. ABRAMS: Q. Now, Mr. Buckman, have you aggregated those figures?

A. Yes, the total aggregate, of these figures, at the present time, that is outside of the right of way outside of south Jacksonville, totals $367,545.00 against $247,900.00 as the original value in 1907, making an increase of $119,645.00.

Q. You say that aggregate embraces what?

A. Embraces the property outside of the right of way, in Duval County.

Q. You have already testified as to—

A. I have already testified as to the average increase on that outside land.

Q. Have you aggregated the increase of values at Mayport?

A. Yes, that is all included. You see South Jack-

sonville property and Mayport property is described mostly in lots and blocks.

(Thereupon the hearing was adjourned.)

Thereupon the hearing was convened at 2.30 o'clock P. M. Friday, January 19, 1912. Present the same parties.

Thereupon the witness Courtland Buckman was recalled and having been previously sworn, testified as follows:

COURTLAND BUCKMAN.

Direct examination.

MR. ABRAMS: Q. Did you make an estimate of the values of the terminal property?

A. Yes, of the Jacksonville Terminal property.

Q. Now did you make an estimate in 1908, of the then value of the property without any buildings?

A. I think it was in 1907, that I made the estimate.

Q. In 1907 I mean?

A. Yes, sir; I did.

Q. Without the buildings?

A. Without the buildings or tracks or anything, just simply valued the land.

Q. Can you state what you estimated the value at at that time?

A. I think it was nine hundred thousand.

Q. Has there been any increase since then?

A. Yes, sir.

Q. What has been the difference?

A. At least fifty per cent.

Q. That would be a million and three hundred thousand?

A. Yes, sir.

THE COURT: That is the South Jacksonville terminals?

MR. ABRAMS: No, sir; that is the property owned jointly by the East Coast, the Seaboard and the Coast Line.

MR. NEEDHAM: That goes in under our objection.

THE COURT: Yes, I am taking it under your objection, and noting exception for you.

Q. Have you got a tabulation as to that of the Atlantic Coast Line and the East Coast?

A. I haven't got it with me, it is over in Jacksonville.

Q. Now, Mr. Buckman, in regard to that terminal property, on what do you base your present estimate.

A. On what it is—on what I have to pay for property in that vicinity, and what I have bought it at since.

Q. Do you know of any properties that the terminal people have bought comparatively recently?

A. I bought four lots for them eighteen months ago or two years ago, in the western part of this tract.

Q. Is that more in the built up part or less built up?

A. No, further out. We paid ten thousand dollars, and the four lots are one hundred and five feet square.

Q. Now, state to the court where the terminals is located and its relation to the balance of the town?

A. Why, the terminal shed is down here (indicating), right in here, and this is Bay Street (indicating).

Q. What is Bay Street in Jacksonville?

A. Oh, it is the principal business street, one of the first streets from the water. Here is the terminal station here (indicating), but this is the property I am speaking about, all this in red in here (indicating), all this in here (indicating) coming from here in here. It takes in this, and goes back in here, and then going on west in here (indicating), I think there is something like a hundred and twenty-five acres all told if it was in acres. Now here is the round-house in here (indicating), and they have nu-

merous trackage in here; all this comprises what is known as the Jacksonville Terminal Company; all the railroads owning it jointly as I understand it.

Q. And this is the Union Station here (indicating)?

A. Yes, sir. A lot right here (indicating), 105 feet square, is worth ten thousand dollars at present. Of course, as you get down in the city those values increase in a great extent, and going on down here on Forsyth Street a few blocks east of Bridge Street property three years ago fifty-two and a half feet front sold at twelve thousand five hundred dollars, in a year's time after that it sold for twenty-five thousand five hundred dollars. Of course, that is closer down in the business district of Jacksonville, but it is growing westward and have grown for a number of years. All of this property is getting more valuable every year.

Q. What I want to get at is the city building up on this side of the property?

A. Yes, sir; it has built up here (indicating). When you get across Myrtle Avenue here, there is the subway, which gives an outlet to this property; this is Brooklyn (indicating), and all the western part of the city here is taken up with manufacturing interests and factories.

Q. Could you let us have this map?

A. I guess you can have that.

Q. Now, just show the court where this Atlantic Coast Line and East Coast terminals are.

THE COURT: It has considerable property between the railroad itself and Bay Street?

A. Yes, sir; this is the Terminal station (indicating) down here, and on the north of Bay Street—

Q. And also property on the north side of Bay Street?

A. Yes, sir; this belongs to the Jacksonville Terminal Company.

Q. Now, I am asking you to identify this prop-

erty, but the enormous freight station owned by the Coast Line and the East Coast.

A. Well, they come in here (indicating), and come across Bay Street, and come across and split that block in half down here all the way down to Jefferson Street. There are sheds all along there (indicating).

Q. That is half a block north of Bay Street, and occupying the center of the block?

A. Their tracks run down the middle of the block, they run from Bay to Forsyth; they own all this in red in here (indicating).

Q. That is the Atlantic Coast Line and the Florida East Coast?

A. Yes, sir.

Q. Now you haven't got the rest?

A. Not on this particular property, but I have in Jacksonville, but I haven't it here.

Cross-examination.

MR. NEEDHAM: Q. How did you estimate your values there, on acres or feet or blocks?

A. No, I base it practically on the list price you see.

Q. You divided it into lots?

A. This was before they bought it and subdivided it into lots it was one tract known as the Honeymoon tract; it had been divided before they bought it.

Q. You took the valuation as to lots?

A. Yes, sir; practically as lots.

Q. That is if the railroad was out of the way you took the list and then valued the lot in the subdivision?

A. Yes, sir.

Q. And you valued these lots based on the value of lots adjoining?

A. Yes, and on what I had sold property for for the Terminal Company. I sold a part of this property that the Terminal Company owned in here (in-

dicating). At one time they put it on the market and I sold it for them, and I am basing my figures on what I got for it three years ago, and what I would have to pay if I bought for them as well.

MR. ABRAMS: Q. At one time they owned all this (indicating)?

A. Yes, sir, those two blocks and a large tract on the north.

Q. All your valuation of this property is based on lot values, all this?

A. Principally, yes, sir. That is about the only way we can do it, because there is nothing in that territory being sold in acreages, it is all in lots. That is all in the corporate limits of the city of Jacksonville that property is.

Q. Well, that is a matter of argument, we want to get at the way in which you made that examination?

A. Yes, you see, while this does not show in lots, you take the original map of Jacksonville, this was a subdivision, the railroads had to buy it in that way, and I simply valued it in the way it was.

Q. That map was in vogue when the railroad was put on there?

A. Yes, sir; they cut out a good many streets.

Q. Are there not streets other than those shown on this map here?

A. No, sir; not west of Myrtle Avenue here.

Q. There are no streets except those which are shown on this map?

A. None, except those shown on this map.

THE COURT: Q. What is the valuation you put upon the property owned jointly by the Atlantic Coast Line and the Florida East Coast?

A. I haven't got that yet.

Q. How many acres did you say you had valued?

A. I think it is in the neighborhood of 125 acres, if my memory serves me right.

Q. You don't know how much is in the other tract, of the Coast Line and the Florida East Coast?

A. No, sir, that is all lots and blocks according to my valuation, taking it at so much according to my valuation, taking it at so much a lot and block, and figures up just that way.

MR. ABRAMS: Q. Has that increased in value?

A. Yes, sir.

Q. About how much?

A. That would average easy fifty per cent, if not more.

Q. You have made your valuation in 1907 just the same as you are making it now?

A. Yes, sir, exactly, and adding the increase.

Did you make a list of the lots as you valued them in the different parts or did you take entire list of lots and give an average value to the lots?

A. No, sir, I valued them separately, because lots in here (indicating) would be worth more than they are further out.

Q. So that you take up each lot as it would appear here if subdivided?

A. Yes, sir.

Q. That is, if subdivided before the railroad bought it, and gave to each lot a valuation?

A. Yes, sir.

Q. Can you tell what is the size of those lots?

A. Jacksonville lots are all 105 feet square, that is, Jacksonville proper; some of the subdivisions are different.

Q. How is property valued and sold, by the front foot or by the lot?

A. No, sir; not always. Down in the business part of the city, that is, right down in the heart of the city, they are beginning to value it at so much a front foot, but heretofore they have been valuing at so much a lot.

Re-direct examination.

MR. ABRAMS: Q. Now, suppose the Terminal Company was to be moved further out, and this was sub-

divided again into lots, do you think it would bring $350,000?

MR. NEEDHAM: I object to that hypothetical question: no man can tell what the effect of taking a railroad away would be on the property. I don't see that this has any bearing on the property at all.

THE COURT: The question is what its value is now, the other would be speculative.

(That's all.)

(Witness excused.)

MR. ABRAMS: I want to offer this map in evidence as an exhibit.

(Blue print of the Jacksonville Terminal Company filed in evidence.)

Thereupon the Complainant to further maintain the issues upon its part produced and caused to be sworn as a witness one S. W. Rowley, who testified as follows:

S. W. ROWLEY.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. S. W. Rowley.

Q. Where do you live, Mr. Rowley?

A. San Mateo, Florida.

Q. Where is that, sir?

A. Putnam County.

Q. What is your business or occupation?

A. Dealer in general merchandise.

Q. Are you familiar with the values of land in your territory?

A. Yes, sir.

Q. How did you come to know them?

A. Well, I have resided there for 29 years, and while I have not been engaged in the real estate business on my own account, I have heard of transfers

and looked up propositions and been acquainted with the values of transfers of a great many pieces of property in this territory.

Q. Now, were you familiar with the values of land in this territory in 1907 and the early part of 1908?

A. Yes, sir.

Q. Did you make an estimate of the value of these properties?

A. Yes, sir.

MR. ABRAMS: This is the original estimate, and we will put this in evidence.

Q. Now, is this your original report?

A. That is my handwriting, yes, sir.

Q. Did you make a copy of this?

A. Yes, sir.

Q. Have you got a copy of it with you? Did that represent a fair estimate of values at that time?

A. I think so.

MR. ESTERLINE: I want to make the usual objections that the witness is not qualified to testify as to the value of the land.

Q. Mr. Rowley, in making these estimates, how did you arrive at the value?

A. I took the measurements and reduced it to acres and based the valuation per acre, based the valuation upon the acres.

Q. Well, in doing so, how did you arrive at the money values?

A. Why, in comparison with the lands adjoining.

THE COURT: How did you know those values?

A. Well, I say, I have been watching those lands for a good many years and I have seen them sold and seen them bought and seen the valuation put upon them.

Q. What extent of territory is covered by the report?

A. Only about six miles.

Q. From what point to what point?

A. Where the railroad enters Putnam County on the East to where it leaves it on the south.

Q. That extends through San Mateo?

A. It is just a spur in San Mateo, a spur to the St. Johns River bridge at East Palatka.

MR. ABRAMS: Q. Now, I notice that some of these lands at San Mateo and Orange Mills and East Palatka and so on are given by the lots, how did you arrive at the value you placed upon those lots?

A. Why, you will notice that I have reduced it to acres and have given the same valuation that I would the adjoining lands, which are in acres.

Q. I mean, how did you find out what the values were at the time?

A. By the values of the lands adjoining.

Q. Now, since you made that estimate and valuation, in 1907, has there been any change in the values of those lands?

A. On some of them.

Q. To what extent has there been any change?

A. Some of them have increased two or three hundred per cent, some of them one hundred and some of them fifty per cent, and some not at all.

Q. What would you say would be the average increase throughout that territory?

A. Twenty-five per cent.

Q. What was the aggregate value you placed on the lands and right of way in that territory in 1907?

A. Well, it was about $5,000, or a little over; between five and six thousand dollars.

Q. What estimate do you place on it now?

A. Something over $7,000.

Q. What was the aggregate according to this you now place on it?

A. $7,449.50.

MR. ABRAMS: File that in evidence.

(Report filed in evidence.)

Q. State upon what you base that?

MR. ESTERLINE: This is objected to. It is understood that our objection goes to all of this.

THE COURT: Objection overruled.

MR. ESTERLINE: Exception.

THE COURT: Exception noted.

Q. Mr. Rowley, can you state to the Court what causes produced that increase in value in the past five years?

A. Well, for one thing, Putnam County has built a bridge across the St. Johns River and has built a hard surfaced highway which passes through part of this land and parallels the railroad right of way, I mean the distance through Putnam County, in every direction, around the 'Y,' and clear up to San Mateo, in the other way, clear to Hastings.

Q. Has there been any increase in settlement?

A. Yes, sir.

Q. What development is there in farming?

A. Why, in the last three years the increase of acreage in the Irish potato country between East Palatka and Hastings has been increased five hundred per cent.

Q. That is Irish potatoes?

A. Yes, sir.

Q. Isn't that becoming quite a large production in that territory?

A. Yes, sir, the chief industry.

(That's all.)

MR. NEEDHAM: No questions.

(Witness excused.)

Thereupon the Complainant to further maintain the issues upon its part produced and caused to be sworn as a witness one Frederick S. Morse, who testified as follows:

FREDERICK S. MORSE.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. Frederick S. Morse.

Q. Where do you live, Mr. Morse?

A. Miami, Florida.

Q. How long have you lived there?

A. Oh, a great many years, about twenty or twenty-five years.

Q. Mr. Morse, what is your business or occupation?

A. Real estate.

Q. You handle any lands for the Florida East Coast?

A. For the Model Land Company.

Q. Are you under salary or selling under commission?

A. Commission.

Q. Just like any other?

A. Yes, sir, just the same as anybody that places land with me.

Q. Now, Mr. Morse, what opportunities have you had for ascertaining the values of lands between Dania and Miami?

A. Why, I have been selling those lands for everybody that owns them, but especially for the Boston Land Company and the Florida East Coast, and until they transferred them to the Model Land Company, and after they did transfer them, to the Model Land Company.

MR. BOGGS: We will admit Mr. Morse is a qualified witness.

Q. Did you make in the latter part of 1907, and the early part of 1908, a valuation of the right of way between Dania and Miami?

A. I did.

Q. Look at that and see if that is a copy of your report?

A. It looks to me alright.

Q. Well, that is a copy of it, look at it and see if that is not a copy.

A. Why, I would have to go over every item, only it totals all right.

MR. NEEDHAM: The total is what—$17,964.75?

A. I don't know, sir; I will agree to it if you will approve of it.

Q. Now, upon what did you base those values, Mr. Morse?

A. Upon what I thought was the value at that time?

Q. Did you value the land used for railroad purposes between those two points, Dania and Miami, I can't find it here; see if it is there?

A. Now, I started in here, with section 3, 51-42—and then I go to station grounds without improvements.

Q. Now, in making those values how did you arrive at the figures?

A. Why, just as absolutely as I could from the valuations, taking everything into consideration, the adjoining lands or lands in the vicinity.

Q. Since you made those valuations there in 1907, have the lands increased or decreased in value?

A. They have advanced.

Q. To what extent was the average advance of that territory from Dania to Miami?

A. I should think it would be a conservative estimate to say double.

Q. One hundred per cent?

A. I should say so.

Q. What has caused that increase, Mr. Morse?

A. Well, increase of business and people coming in?

Q. That does not include Miami at all, does it?

A. No, sir, it goes to what I understand the limits of Miami. Yes, to the north limits of Miami.

Q. Making an aggregate of $17,964.65, is this the valuation, you think that land has increased throughout the territory of one hundred per cent?

A. Double, I should say.

Q. That would make it $35,929.30?

A. I will have to add it to see, but I guess you are right.

MR. ABRAMS: File that in evidence.

(Report filed in evidence.)

Q. Did you make an estimate of the railroad property in Miami and lying north of the Miami River, in 1907?

A. Why, I took part in it, I did.

Q. Who made it with you, were you alone in your estimate?

A. No, Wilson and Huston.

Q. Three of you made it?

A. Yes, sir.

Q. Was that the report you made at that time?

A. Yes, sir.

Q. Now what did that include?

A. Everything in Miami north of the river, as I remember.

Q. Now, Mr. Morse, upon what did you base those valuations at that time?

A. Well, we got together and we discussed what we thought was the actual value at that time, and of course we sized that up by what land was selling for and probably we used a little judgment as to whether there was any—I don't remember whether it was any boom condition or anything of that kind at that time, but I think we valued it exactly as the land was selling for, adjoining lands.

Q. Now, I find that the aggregate values here in that territory here by you at that time was $1,054,750.00?

A. Yes, sir.

Q. Did you consider that at that time a reasonable market value?

A. I did, surely or I would not have subscribed it.

Q. Has there been any increase or decrease in the valuations in that territory?

A. There has been a great deal of increase in the value of Miami property.

Q. Can you give to the Court an estimate of the increase in the valuation of this property that you aggregated in 1907, as having a valuation aggregating $1,054,750.00?

A. In my limited time you have given me when you wrote me a few days ago before you gave me this copy this morning, I spoke to Mr. Wilson and Mr. Huston and we both thought it over and we didn't always agree, I thought that—I know that they were a little higher than I was in matters that I will call your attention to. My idea was after looking over the whole thing, and here I will say for the benefit of all of you, that there has been a great deal of increase in Miami property, but it has been mainly in the avenues and the parts that people have wanted most, and I think a fair consideration would be about 25 per cent on all the values except that which we noted, and the 1,600 feet on the bay front, including the dock and the property in front thereof, in which there was a contract between the Government and Mr. Flagler to make a harbor therein, and also to finish his contract with the Government out to deep water. Now we all thought very much on that proposition that the deep water has not been brought into that dock, and the thing is just as was then.

Q. About the same valuation?

A. Yes, sir, but on the balance of that, on the balance of the property, I want to—my idea is taking it all through without specializing in any particular that there is a 25 per cent increase, although Wilson and Huston thought more—

MR. ESTERLINE: Never mind about what they think.

A. Alright.

Q. You say twenty-five per cent increase on the aggregate valuation?

A. No, on everything outside of the $800,000 on that dock.

Q. That is on the $254,000 valuation?

A. Well, I hadn't figured it out, between $800,000 and $1,054,750.00.

Q. Your opinion is there has been a twenty-five per cent increase on values in that?

A. No, I was stating that as a whole thing, I am not stating especially where I place it.

Q. But you excluded that $800,000?

A. I did.

Q. On the balance, on the $254,000 you estimate of an average of twenty-five per cent?

A. Yes, sir.

Q. Now, upon what do you base that average of twenty-five per cent?

A. Why, in Miami, there has been a great increase in property, some has doubled, some has tripled, but in the main avenues and in the places where there has been the greatest demand for property it has increased a great many times, but in this property that we have quoted, I don't believe there has been much advance, with the exception of the bay front. Mr. Wilson and Mr. Huston would not agree with me, I mean they thought there has been values all along—

Q. That is for them to testify. You base that from your knowledge of the values?

A. Yes, sir.

MR. ABRAMS: We offer this in evidence.

(Report filed in evidence.)

Q. Mr. Morse, from Miami to Homestead, have you made any estimate of the values?

A. I have.

Q. When did you make it?

A. Why, I made it on Monday, beginning of this week.

Q. Have you got it with you?

A. Yes, I have not totaled it but I have it here.

MR. NEEDHAM: About twenty-eight miles?

A. Yes, sir.

Q. How did you ascertain those values between Miami and Homestead?

A. Why, I am doing business all along the line all the time and from what I thought was a conservative value.

Q. Now, since the last five years, have there been any increase between Miami and Homestead in those values?

A. Yes, sir.

Q. To what extent?

A. Why, I should say the same, as I said before, about double.

Q. Now, how many miles is that from Miami to Homestead?

A. About 28 miles.

Q. Upon what do you base those values?

A. By a conservative estimate of the selling values.

MR. NEEDHAM: When was the road opened up from Miami to Homestead?

A. Why, I don't know exactly, I don't remember the date.

Q. I don't mean the date, what year was it opened?

A. Why, I couldn't tell you that, you know, when you get me in Court I don't want to say a thing to you unless I know it and I would have to look it up but I can find out very easy.

Q. Mr. Morse, this includes all railroad lands, right of way, and station grounds?

A. So far as I know, yes, sir.

Q. Now in making these values in Miami, did you consider the value of any buildings?

A. You mean south of Miami, there, don't you?

Q. I am speaking of Miami proper.

A. No, sir.

Q. Just the lands?

A. No, just simply the land.

Q. How about this other?

A. No, sir, I didn't consider any buildings there.

Q. Nothing but the real estate?

A. Yes, sir.

Q. And you considered—I see station grounds, etc.?

A. That is south of Miami, that is about a mile south of the river.

Q. Then this covers everything to Homestead?

A. Yes, sir. I have not completed it, I would like a few minutes to complete it in.

Q. I see you have not run it out?

A. Could you give me any more time to complete it in? I will do it up here. I have not gone over this, I haven't had a copy made of it.

Cross-examination.

MR. BOGGS: Q. Mr. Morse, will you state the boundaries by streets of this strip to which you attach a valuation of $800,000 here in the City of Miami?

A. It is according to map I have made. You remember what year it was in? In 1907 or '08, whatever the date was, now you will find it if you will—

Q. Continuation of above mentioned strip of riparian rights and extending in a southerly direction 1,600 feet and lying opposite south half of Block 40, Fourth Street, Block 41, North Fifth Street, Block 60, north, Sixth Street, Block 61, North, Seventh Street, Block 80 North, Eighth Street—

A. Yes, sir.

Q. Then that lies between Eighth Street and a point half way between Third and Fourth Streets, doesn't take any on the Bay front?

A. Yes, sir.

Q. Did you take into consideration in making that valuation that a part of that property was a public park and did not belong to the Florida East Coast Railroad Company?

A. Why, this was a long time ago, I think I was if I remember. I was figuring entirely on what I understood to be the contract between Mr. Flagler and the United States Government for a harbor there.

Q. Well, you valued then that strip of land between Biscayne Drive and the Bay, as the property of the Florida East Coast Railroad Company, did you?

A. Why, I imagined, I thought about that at the time, I imagined there might be a great question in

that as to that piece between the riparian rights and the Drive but that was too deep for me to worry about.

Q. Didn't you know that it had already been decided by the Courts of Florida that that was a public drive in there?

A. Not that I could say.

MR. ABRAMS: That is a question of law.

THE COURT: Well he assumed in this valuation that this property was the property of the Florida East Coast Railway.

A. Mr. Boggs, the land has nothing to do with the riparian rights that I am putting the value on as I look at it. I was simply looking at the riparian rights.

THE COURT: It entered into your valuation as I understand you, that Mr. Flagler had a contract with the United States?

A. Yes, sir.

Q. That entered into your valuation?

A. Yes, sir.

Q. Without that your valuation would not have been what it was?

A. Why, no, sir, except that at that time we put that in they were building the extension at that time and they were getting a very good income on that valuation.

Q. How did you know they were getting an income on that?

A. For no reason only my own judgment and that that was very good income in building the extension.

Q. Well, but what did that have to do with the building of the extension?

A. Nothing at all with me. I was getting at the valuation of the property. Anybody would have done the same thing.

Q. Then your idea was they were getting a good income from the extension?

A. Why, they were getting a very good income from the work they were doing, I supposed they had

been getting a good income from other properties.

Q. But you don't know what their income was?

A. No, I don't know anything about that. I don't know nothing only about real estate values in Miami.

Q. But you took into consideration the income they were getting in fixing your valuation?

A. Why, no, I took into consideration, I think you will find it in my testimony, that they were building the extension at that time and that was one enterprise that was going on, and that enterprise was the true valuation at that time, outside of the contract between him and the Government. Now there has been a great many enterprises going on down there in our part of the country. There is a big one in the Everglades business now and there is many going on and I hope there will be a great many more. If you will tell me just what you are after I will answer it.

MR. NEEDHAM: Q. Where is the railroad there?

A. Here is the railroad (indicating).

Q. You valued it that high because of this bridge on the water?

A. Yes, sir, and the contract between Mr. Flagler and the Government.

THE COURT: You testify that the existence of this contract—

A. No, we valued that according to what it would be, we valued that property on the basis of that contract and we considered in looking up everything about it what the property would be worth to anybody that was doing any other kind of work like Mr. Flagler was doing on the extension.

MR. NEEDHAM: Well, you went on the theory that the title to this piece of land was in the railroad company and therefore—

A. Riparian.

Q. You went on the theory that the title to this piece of land was in the railroad and therefore they had the riparian rights, is that right?

A. We went on the theory that the railroad owned the riparian rights.

Q. Well, they owned by virtue of owning this ground?

A. Now, you are asking me questions I am not up to.

THE COURT: Q. You valued the rights of the railroad, whatever they were, the shore rights?

A. Yes, sir.

Q. At $800,000?

A. Yes, sir, and the facts of the extension business was simply a comparison of what should be earned by any other company or any other people that wanted to.

Q. You would have valued those shore rights to any other person if they held them in the same manner?

A. Just the same without the extension.

Q. If the railroad company did not own the shore rights there, of course, they were no value?

A. Why, don't understand that we made that our valuation but after we made the valuation we calculated that a very small interest on that amount would pay any company, extension or any other company for the use of those rights.

Q. They would be worth that?

A. Yes, a very small interest on $800,000, a very small interest and I think would be worth more today to any company that wanted to do any great business there.

MR. BOGGS: Q. Now, Mr. Morse, you think then, that the riparian rights independent of any land ownership of that strip, are worth $800,000?

A. We have not questioned that, we don't know who owns it. You may—

Q. You mean that strip between Biscayne Drive and the Bay? With the rights that belong to it in your valuation, do you?

A. I mean that is the average providing that the contract between Mr. Flagler and the Government is carried out.

Q. Now, Mr. Morse, was your valuation based on

any commerce that has been done on that piece of property?

A. Just what Mr. Huston and Mr. Wilson and I thought it would be worth. Now, none of us are posted on dockage property or anything of that kind but we considered it very carefully and I might ask you to tell me something of what dockage privilege there would be there.

THE COURT: Is there any dock there?

A. Yes, sir, there is a dock if I remember rightly. You understand I have not gone over this testimony since that time.

Q. Well, you know whether there is a dock there?

A. I will try to tell you the length of it, I think it is about eight hundred feet long. This land (indicating) has all been filled in. When the harbor was talked of, the land was pumped in from the harbor and the dock was made with the land.

Q. It is not an ordinary dock on piles?

A. No, sir, it is all land.

MR. HUDSON: Q. As I understand you, you did not pay any attention to who owned the land?

A. No, sir.

Q. You simply looked at the land, the riparian rights?

A. No, I understood that the riparian rights were owned by the East Coast People.

Q. At the same time it didn't make any difference to you who owned it? You fixed the value regardless of who owned it?

A. Why, I don't consider the land without the riparian rights are very much value.

Q. But the land and the riparian rights were worth about $800,000?

A. No, I wouldn't make any difference between the proposition, I would say that the land with the riparian rights or the riparian rights alone.

MR. BOGGS: Now, Mr. Morse, your valuation then is based on what you think the commerce and use

of that dock and water front privileges will be when the harbor improvements are completed?

A. Why, that is a very conservative estimate according to my judgment.

Q. But that was not based upon present conditions existing in 1907?

A. Why, as I understand it.

Q. But you were looking to the future, to extend it were you not?

A. No, right then. There is where you come up on that question again. If Mr. Flagler has got a contract with the Government, why isn't that an absolute fact. You don't suppose the Government is going back on Miami, do you?

Q. I am not testifying, but you went on the basis that commerce was actually carried on on that water front?

A. Not on the valuation but we noted at the same time that the extension work was going on.

MR. NEEDHAM: Q. What do you mean by the extension work?

A. Why, the East Coast Railway.

Q. You mean the extension of its channel?

A. Why the East Coast Railway people were building their road from Homestead to Key West.

Q. Is this a part of it?

A. No, sir; you understand this had nothing to do with our valuation but we realized if there was any business going on of any consideration at all, we realized how valuable that would be and we considered what a small percentage the extension of $800,000—This was not on the valuation but we made the valuation of how any company or anybody trying to do anything to make any improvements down in that part of the country, what a small valuation that would be. But the value was made simply on the value of the contract between Mr. Flagler and the Government.

Q. That contract was for the deepening of this channel out how far?

A. That contract was for the building of the road and the completion of the inside channel to where the Government takes it up on the other shore, and he was to do that as soon as the Government had completed their part.

Q. He was to complete the inside harbor and the Government was to complete the outside so as to give deep water connection?

A. After the Government had completed their work he was to do his work but you will have to go to the East Coast Railroad to find those facts. All I am relying on is what is in the paper and general talk.

MR. ABRAMS: Doesn't the P. & O. steamships land on the dock now?

A. The P. & O. steamships and other steamships are landing at that dock right now.

Q. Isn't there also a dock built on piles in front of that property, Mr. Morse?

A. Why, I couldn't say that. When they filled in this dock here they put piling down and threw in dirt in back of it. Now whether it is filled in over in front of it, I don't know.

MR. BOGGS: Now, you have valued these riparian rights at $500 a front foot, have you not?

A. Yes, sir.

Q. Have you ever known any to be sold for that in Miami?

A. No, sir.

Q. Now, you have described and valued in this a considerable strip of land lying both to the north and the south of this and between Biscayne Drive and the Bay, have you not?

A. Yes, sir.

Q. What use is the railroad making of that land?

MR. ABRAMS: I object to that.

Q. Do you see any use being made by the railroad company, have they got any tracks on it?

A. Now, right here for instance, the dock does not come down as far as their contract with the Govern-

ment. I can see where they should do this and I can see that if they propose to extend this dock as commerce needs, that they would need this land here.

Q. But they are not making any use of it now, are they? Just stands there vacant, doesn't it?

A. So far as I know, I don't have anything to do with the railroad property.

Q. But you pass along there, you see it?

A. No, I think it is occupied.

Q. What is it occupied with?

A. I couldn't tell you, I don't know exactly.

THE COURT: I think you getting a long record without—

THE WITNESS: If you would be specific, I could answer the question.

MR. ESTERLINE: Q. Mr. Morse, these lands about which you have testified here, the description of those lands were furnished to you by the railroad company, were they not, for the purpose of making the valuation?

A. From here back as I remember, they were shown a plat of other, plat was sent me.

Q. But this description about which you have testified and which is in the document, which has been offered in evidence, that was furnished to you by the railroad company as lands which it wanted you to put a value on, was it not?

A. They sent me a plat.

Q. Of all the lands from the point on the north to the point on the south about which you have testified from Dania to Miami and from Miami to Homestead?

A. No, sir, they sent me a plat of their lands in Miami.

Q. Well, I am asking you about all the lands?

A. No, sir.

Q. Well, how did you know what lands to value?

A. Well, from various ways. As I told you in the beginning I am a real estate man for the Boston

Land Company and the Canal lands and the Florida East Coast Railway—

THE COURT: You need not repeat that.

A. And of private individuals that want to report their lands to me—

Q. I don't think I make myself clear. When you were asked to place a value on the lands, you were furnished with a description of those lands by the railroad company?

A. No, sir, formerly I got the right of way for them and then I looked up the records.

Q. How did you know what lands to value?

A. Why, to begin with I looked up the right of way for them and secondly I know most everything anybody owns along there because I am selling the lands for these companies.

Q. How did you know to place a valuation of $800,000 on the value you put on the riparian rights as you call it, what caused you to do that, who asked you to do that?

A. From what I stated previously, these gentlemen—

Q. No, you need not testify about those men, you were asked to put a value on that property for the Florida East Coast Railway were you not?

MR. ABRAMS: No, he was not, you are mistaken.

A. He asked me to put a value on the property the Florida East Coast owned.

Q. And that was furnished to you as property which the Florida East Coast Railway owned and on which you should put a valuation, is that right?

A. No, sir, not exactly. I was sent a plat of what they owned in Miami besides that I looked it up.

Q. Was that included in the plat of what they owned in Miami?

A. I couldn't say about that without getting for that, I looked for that plat to bring up here with me.

(That's all.)

(Witness excused.)

Thereupon the Complainants to further maintain the issues upon its part produced and caused to be sworn as a witness one F. H. Canfield, who testified as follows:

F. H. CANFIELD.

Direct examination.

MR. ABRAMS: Q. What is your name?
A. F. H. Canfield.
Q. Where do you reside?
A. St. Augustine.
Q. How long have you lived, here, sir?
A. 38 years.
Q. What is your business or occupation?
A. Real estate.
Q. How long have you been engaged in the business of real estate agent, Mr. Canfield?
A. Since 1881.
Q. In 1907 were you familiar with the values of property in St. Johns County?
A. Yes, sir.
Q. Mr. Canfield, did you make about that time a valuation of railroad properties?
A. Yes, sir.
Q. Is the original valuation made by you?
A. I recognize it as such, yes, sir.
Q. You testified in the case of the Trust Company of America against the Railroad Commissioners of Florida. Upon what did you base those valuations?
A. Well, on my judgment as a real estate man and by looking over the property carefully.
Q. Were you personally familiar with those lands?
A. Yes, sir.
Q. Did you go over them?
A. I did at the time, yes sir.
Q. Did you consider those values at that time reasonable values?
A. So far as I was able to judge, yes sir, I considered them so.

Q. Since you made these valuations, Mr. Canfield, has the value of property in this County increased or decreased?

A. I don't think there has been any change particularly.

Q. You think it remains about the same?

A. About the same, yes, sir.

Q. Do you think these figures then, would fairly represent the present values of this property?

A. As a whole I believe they would.

Q. Now, there has been some increase around Hastings?

A. Yes, in some places there might have been an increase and others not on the whole I would judge it to be about the same.

Q. Now, I find that the original report, you value the right of way in this County at an aggregate of $26,374, beginning at the County line at mile post 19 to the County line at mile post 91, do you consider that a fair valuation to-day?

A. Yes, sir, I have no reason to change my mind with regard to it as a whole.

Q. Now with regard to the tracts of land in different parts of the County, I find an aggregate value of $247,105.05, including the property in St. Augustine, do you consider that to-day a reasonable valuation?

A. Why, yes, sir, I know of no reason to change my mind with regard to that.

MR. ABRAMS: I offer this in evidence.

(Report filed in evidence.)

Cross-examination.

MR. NEEDHAM: Q. How much did you value the terminal property here in St. Augustine?

A. There is a list of it right there, sir.

Q. $214,800?

A. Supposed to be, yes, sir.

Q. Is that the Terminal grounds here in St. Augustine?

A. Terminal grounds and what was reserved for terminal grounds as I except the matter at that time. At least that was the property I was asked to put the valuation on.

Q. Is it all occupied by the railroad company?

A. Have you got a map here of the City property?

Q. Can you tell how many miles or what distance is covered by that terminal?

A. Well, here is this strip here which is 400 feet wide through to this point here (indicating). Now the railroad hospital is on that, right on that end; it is occupying a lot of it.

Q. What is the occupation here (indicating) if anything?

A. That doesn't belong to the railroad company.

Q. All then, on this piece of land in the railroad hospital?

A. No, they have railroad property out here (indicating).

Q. What is the size of that block?

A. The block is 400 feet wide and extends through to the San Sebastian River.

Q. How much have you valued that ground?

A. $54,800 all the way through to the river.

Q. Now what is the dimensions of the other valued at $160,000?

A. Oh, that takes all this property from Kings Street clear up.

Q. Takes in the whole of that?

A. Yes, sir.

Q. Is that the ground on which the station is located?

A. Yes, sir, and the machine shops.

Q. Now, from this street to this point (indicating) is it half a mile?

A. Oh, I could count it, we have it on the City map, I could tell exactly from that. It must be pretty nearly half a mile.

Q. So that $214,800 then, your total valuation,

leaves the rest of the mileage of the right of way, $32,305.05?

A. It does.

Q. The right of way outside of the terminal here is approximately 71½ miles and the valuation of that is $32,305.05, is that right?

A. It is if the footings are right. I want to see if the footings are right.

MR. ABRAMS: You will find that $247,000. You must add to that station lands and other lands.

Q. How did you value that terminal property in St. Augustine, by acre or by lot or by block or how did you arrive at it?

A. If I find how much frontage or how many lots it would cut up and the probable valuation of these lots after it was cut up.

Q. Then you base your valuation by the lot valuation?

A. Yes, sir, what property is selling for.

Q. And taking the valuation of adjoining lots of the same size outside of the right of way, you arrive at this valuation?

A. Yes, that is the only way you can arrive at the valuation of property as I understand it.

Q. Well, I want to know how you arrived at it, that is the way you arrived at it?

A. Yes, sir.

Q. You know the area there in feet?

A. I haven't got it, if I had the map I could tell you by figuring it out. I had to do that before I could make any valuation.

Q. I understood you to say you divided it into lots and then valued the lots?

A. Yes, sir.

Q. You don't sell land here by the superficial foot, do you?

A. No, sir.

Q. You sell it by the lot?

A. We figure so much a lot depending on what the frontage is.

MR. BOGGS: Q. All of that lot that you valued at $160,000 is actually occupied by the railroad, all of it?

A. Every bit of it occupied by the railroad.

Re-direct examination.

MR. ABRAMS: Q. That is the valuation of the lands without the buildings, is it not, that you are giving?

A. Yes, sir.

MR. ESTERLINE: That Exhibit goes in subject to our objection. This document is full of "railroad purposes" and "all other lands."

(Witness excused.)

Thereupon the hearing was adjourned.

Thereupon the hearing was resumed on Saturday, January 20th, 1912, at 9.30 o'clock A. M. Present, the same parties.

Thereupon the following proceedings were had:

MR. ESTERLINE: If your Honor, please, by direction of Mr. Assistant Attorney General Dennison, the United States now moves to strike out all the evidence heretofore taken in this case before your Honor for the reason that any proceedings challenging the validity of the order of the Interstate Commerce Commission by the Commerce Court is without power or jurisdiction to review any record or evidence other than that taken before or by the Interstate Commerce Commission, and on which its order is based.

THE COURT: I will overrule that motion and note exception for the United States.

MR. ESTERLINE: The United States now enters an objection to the taking or receiving of evidence or to the taking or receiving of any further evidence in this cause except the record of the proceeding and

evidence taken by and before the Interstate Commerce Commission on which it entered its order and report for the reason that in this proceeding challenging the validity of the order of the Interstate Commerce Commission the Commerce Court is without power or jurisdiction to review any record or evidence other than that by and before the Interstate Commerce Commission on which its order is based.

THE COURT: That objection is overruled and exception noted.

Thereupon the Complainant to further maintain the issues upon its part produced and caused to be sworn as a witness one Charles R. Dilzer, who testified as follows:

CHARLES R. DILZER.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. Charles R. Dilzer.

Q. Where do you live?

A. New Smyrna, Florida.

Q. What is your business or occupation?

A. My business has been that of real estate agent for the last ten or fifteen years.

Q. Are you familiar with real estate values in Volusia County?

A. Yes, sir, fairly so.

Q. State how you became familiar with the values of real estate in that County?

A. By my experience in the sale of them.

Q. You say that experience has run through fifteen years?

A. Yes, sir.

Q. Were you acquainted with real estate values in 1907?

A. Yes, sir.

Q. Did you make an estimate of the values of railroad property and right of way in Volusia County in the latter part of 1907 or the early part of 1908?

A. Yes, sir, I did, on the Florida East Coast Railway's property.

Q. How did you make that investigation and estimate, Mr. Dilzer?

A. I went over the lines and examined them.

Q. How long a time did it take you to do this work?

A. Well, I did it sort of spasmodically. That is going over the ground, I did not make my trips continuously. I would take one day and go one direction for instance and another day I went another direction until I went over the entire route.

THE COURT: What valuation did you put on them, by what were you guided in it?

A. By prices the lands were selling for lying adjacent to the right of way and other properties generally.

Q. You considered that estimate at that time a fair and moderate estimate?

A. Yes, sir.

Q. Since that estimate was made has there been any change in that territory you have examined?

A. Very materially increased.

Q. Where at specially?

A. Well, at New Smyrna, and Daytona, they have materially increased in those places. City properties especially within the corporate limits have increased materially.

Q. Has there been any development in the farming lands?

A. Oh, yes, a very marked development all over the country.

Q. Can you state about what percentage the increase would be on all this territory that you examined?

A. Fifty per cent would be a fair valuation. It

has increased in these towns several hundred per cent in many instances.

Q. In estimating the right of way did you go over it?

A. Yes, sir.

MR. ABRAMS: We offer this in evidence.

(Report filed in evidence.)

Cross-examination.

MR. NEEDHAM: Q. Can you state the number of miles this covers?

MR. ABRAMS: Mile post 92 to 141. Then on the A & W branch from mile post 1 to mile post 28 and then here is the Titusville Branch, mile post 15 to mile post 36.

Q. That is not your computation?

A. No, sir, not my figures, I don't know how many miles it is.

Q. You say there has been some considerable advance in the values, where has that increase occurred, what principal points?

A. Well, all values have increased in Volusia County. In fact that applies to the State generally, that is, there is marked increase in emigration and development throughout the State. The values throughout the country generally have increased very materially.

Q. Has that increase been principally at the stations or towns or around where the railroad facilities exist?

A. Principally, yes, sir.

Q. To what use are the lands put outside of the residential towns in this country?

A. General farming, growing orange groves, and farming generally.

Q. Vegetables and fruits?

A. Yes, sir.

Q. Principally?

A. Yes, sir, almost altogether so.

Q. And the values of land for such purposes depends upon their proximity to railroad facilities?

A. Well, that has much to do with it and it also depends upon the character of the land. You take our hammock land and they are decidedly more valuable than common pine lands. Where the railroad passes through a strip of hammock land, of course it is more valuable than where it is common pine lands and then there is a difference in the character of pine lands as well. Some is much more valuable than others.

Q. The railroad facility, however, is a very important factor in determining the values?

A. Yes, sir.

Q. And the rise in values of property depends upon its proximity to such facility?

A. Yes, sir.

Q. For marketing vegetables and citrus fruits?

A. Yes, sir. That as a general application, that does not apply wholly. For instance, you take our hammock land, some of them are situated quite remote from railroad facilities and yet they have good prices. We have land right there in our Turnbull Hammock that is five and six miles from the station, you would not call that close yet they are valued at and are selling at $100 an acre whereas pine lands nearer to a town are selling considerably less.

Q. In that case, the property has to be transported by wagon to the railroads?

A. Yes, sir, to the railroad.

Q. The market then, reaches out you would say five or six miles from the railroad stations?

A. Yes, sir, where the land warrants it you know.

Cross-examination.

MR. BOGGS: Q. Mr. Dilzer, I notice your memorandum values of acreage of lands here is practically $8, one or two points where it is $5, hasn't there been a

great deal of land changing hands at less value than $8 in that vicinity?

A. No, sir, not that I am aware of. You couldn't get it as a general proposition, you couldn't buy lands anywhere in that neighborhood for less money than that.

Q. You don't know of any at this time that has changed hands at considerably less than $8 per acre?

A. No, sir, on the contrary I have listed now a body of land about 900 acres, lying four miles from our town, it is a wild tract and there is more or less of it in swamp and it is held at $20 per acre as an average and a large majority of it is pine and then there is more or less waste on it. I sold that land several years ago at considerably less money than that. I think I got $7 an acre but it was to close up an estate.

(That's all.)

(Witness excused.)

Thereupon the Complainants to further maintain the issues upon its part produced and caused to be sworn as witness one W. P. Richardson, who testified as follows:

W. P. RICHARDSON.

Direct examination.

MR. ABRAMS: What is your name?

A. W. P. Richardson.

Q. Where do you reside?

A. Jacksonville.

Q. What is your business or occupation?

A. I am a contractor and builder.

Q. For how many years have you been engaged in that business?

A. About thirty years.

Q. Mr. Richardson, in the latter part of 1907 or

the early part of 1908, were you engaged in valuing all the buildings on the East Coast Railway?

A. Yes, sir.

Q. By whose instructions did you make that valuation?

A. I received a request from you and was retained by you to make these valuations; I think my first information was some time in June, 1907, and I think I started to make the valuations in August or September, along in the Fall of 1907 and I think I finished some time about the middle of January, 1908, about the 10th or 15th of January.

Q. Now, how did you make those values?

A. Well, I visited the site of all the stations and towns on the road.

Q. Did you examine the buildings personally?

A. Yes, sir.

Q. Were you furnished any statement as to the values or costs of any of them?

A. Absolutely none.

Q. Now, in what way did you ascertain the values at the time you made the estimate, explain what your process was?

A. Well, I went to the site of the building and measured the building up and make sketches of it, of the character and construction and took notes, etc. This is the book that I used at the time and the papers. For instance, I will go to a site and measure up the buildings and make sketches of them, something of that kind (indicating), and after making them, I would figure out the quantities and the number of feet of lumber and the number of brick and so on and so many squares of slate, etc. Everything that goes into the construction of a building I figured on it. These papers I put in my book and put them in my safe and they have been there ever since.

Q. Were you familiar at that time with the value of lumber and material generally going into the construction of those buildings?

A. Well, that was my business, I was carrying on business at that time, building houses and estimating and making all my own estimates, of course and contracting for buildings generally of various kinds and descriptions.

Q. Now, look at this and see if that is the report you made to me giving the details and aggregates?

A. Yes, sir, that is the report I made.

MR. ABRAMS: I will state to counsel and the Court that when he got through, just about the time he got through making this report, the Colonial Trust Company which began suit was merged into the Trust Company of America, and I had some delay in having the parties substituted by order of Judge Locke, who was away and did not get back for several months and we never resumed taking testimony at all. I will have this copied for you gentlemen, that is the only copy I have got.

THE COURT: That correctly states in detail the result of your inspection?

A. Yes, sir, that is taken from this book. Each one of these buildings are priced in here with great detail.

Q. I understood you to say you examined every building personally?

A. Yes, sir, absolutely, examined it and measured it. Measured it with the assistance of a man who held the tape in measuring.

Q. Now, that covered all the buildings that were in existence at that time on the line of the railroad, the railroad buildings?

A. Yes, I think so, all the buildings.

Q. Now, I find here a summary on page 19, you did not value the land or anything?

A. No, just the buildings.

Q. State what your estimate was at that time of the aggregate value of those buildings?

A. Well, the total was $1,030,951.

Q. Mr. Richardson, since you made that valuation, has there been any change in the cost of construction

of buildings along the line of that road, or Florida, for that matter?

A. Well, the cost of building has increased somewhat since that time.

Q. Can you give me what the average would be. What the percentage would be?

A. Well, carpenters' wages have increased and brick layers and common labor has increased and in some instances I will say that lumber has increased somewhat. I should think fifteen per cent., I should think as a whole the value of the cost of building has probably increased fifteen per cent anyway. In some cases certain classes is more than that, but I should think fifteen per cent would be a fair increase of the cost of buildings generally.

Q. What condition did you find these buildings in when you examined them?

A. Well, they were in a very good state of preservation. They seemed to be in pretty good shape, pretty good repair, rather surprisingly so, I thought at the time.

Q. As I understand you, this report specifies each building as you went along and describes what kind of buildings, with the estimate or value and cost.

A. Yes, sir.

Q. From Mayport to Homestead?

A. Yes, sir.

Q. Now, Mr. Richardson, did you make and state an estimate of what it would cost to build the terminal buildings on Bay Street in Jacksonville?

MR. BOGGS: Question objected to on the ground that the terminal station and buildings in Jacksonville is not the property of the petitioner.

THE COURT: I will receive this evidence subject to that objection.

MR. NEEDHAM: I understand that was the general objection that goes to all the testimony as to the value of the terminal grounds and buildings, I understood that was being reserved.

Q. Look at this and see on page next to the sum-

mary of the railroad buildings, if that was your estimate?

A. Yes, sir, that is my estimate.

Q. What is the aggregate?

A. Well, the total, value $183,695.00 which is supported by a note I see here that I made showing the value of the building, train shed and platforms $183,695.00.

Q. Was that a fair valuation at that time?

A. That was my honest opinion of it, Major, in other words, if I had to make a contract to erect that building at that time, I would have charged that much for it.

Q. Now, Mr. Richardson, in making these estimates, did you include the architect's work or just the buildings themselves?

A. I did not include any architect's work.

Q. Then in valuing these buildings the expenses of architects, planning the buildings and so forth would have to be added would it not?

A. Most assuredly.

Q. Can you say about what percentage that usually, architect's work?

A. Architect's fees as adopted by the American Institute of Architects is usually 5 per cent for drawing specifications and supervision. That is the customary fee, 5 per cent.

Q. Did you consider in these estimates legal expenses involved?

MR. NEEDHAM: What legal expense is there in building?

MR. ABRAMS: I never knew scarcely one on a railroad. I want to say he did not include this. I want to show that he limited it to the cost of construction and no more.

Q. Mr. Richardson, since you made this estimate has there been any addition put to this terminal building, any work been done on it since you made this estimate in 1907?

A. Yes, there has been some remodeling and re-

pairs to it, in fact I am remodeling the terminal station now at an expense of $20,000 probably, but it seems to me a year ago, I think Burwell & Hilyer did some work there but I know there has been more or less repairs.

MR. ABRAMS: I offer this in evidence.

(Report filed in evidence)

Q. Mr. Richardson are you familiar with the building known as the joint freight terminal of the East Coast Railway and the Atlantic Coast Line?

A. Yes, sir, I am quite familiar with it.

Q. Do you know the building?

A. I built it.

Q. Can you state what the cost of that building was?

A. It has been some time since I built it, I think it was about $174,000. I think it was.

Q. Just the building?

A. My contract, I think my contract together with the extra work, etc., I think was about $174,000.

MR. BOGGS: I think your Honor, it better be shown, I don't think it has been mentioned in connection with this building, it will be necessary to show what part of that building is owned by the Florida East Coast railroad.

MR. ABRAMS: It is a half interest, each owns a half interest.

A. Both are practically the same building. They are built as if it were two buildings, one on Bay Street and one on Forsyth Street, the East Coast occupies one side and the Coast Line the other.

Q. Your estimate does it give the cost for the whole thing?

A. For both, yes, sir.

Q. It is practically one building?

A. Yes, sir, one building, virtually one building except that it is occupied, you may say, by two tenants or owners.

Q. Now in making your estimates of the value of these terminal buildings, passenger stations, etc., did

you do it from your own examination and figures made by yourself?

A. Yes, sir.

Q. You did not include any land in your valuation, did you?

A. No, sir, no land.

Cross-examination.

MR. NEEDHAM: Q. I notice that this list contains houses and cottages as well as station buildings, how did you ascertain the buildings that you were to make an examination of, were you furnished a list or were they pointed out to you?

A. Well, I think I got that information, it seems to me I got a list of something of part of the buildings.

Q. At different places?

A. At different places. I think I got a list from Mr. Goff my recollection is, and then when I would visit a place for instance, Titusville or Fort Pierce as the case may be I would go to the agent and tell him what my business was and ask his assistance in pointing out to me and locating these various buildings that was scattered about the yards. That is, when I speak of the yard, the railroad yard at the different points that were pointed out to me, that is, tool houses, and section houses or oil houses or the section foreman's cottages as the case may be. They were pointed out to me and in that way I would find them.

Q. And upon that information, you made your investigation on the theory that they all belonged to the railroad property?

A. Yes, sir.

Q. Do you recall now whether any of these cottages or buildings were any distance from the right of way?

A. Well, most of them were adjacent to the right of way. They were not to say in any case I should say very far off.

Q. But in some cases were separated from the right of way of the railroad?

A. Well, now to answer that accurately I would probably have to know just what the right of way is, you mean the property as owned by the railroad?

Q. I mean the right of way over which the track runs and the station grounds, the use made of it?

A. Well, I should say then they were on the right of way. I don't know how far the right of way would extend. I only know that I found these buildings according to the information furnished me, and I determined by that that that was the specific building which belonged to the railroad company. I don't know how far it was from the right of way because I had nothing to do with the ground.

Q. This statement which you have filed does not give the character of the building as to whether it is wood or brick or stone, does it?

A. I don't think that does.

THE COURT: Q. The memorandum on your book would show it?

A. My book would show the character of building; it would show whether it was stone or brick or what it was. There were structures built of wood, a great many of them.

Q. Can you tell what proportion of them are of wood?

A. Well, I should say they were largely of wood. Some of them were wooden frames and covered with corrugated iron, some were wood frames covered with weather boarding but they were largely of wood, some had slate roofs, some tin roofs, and some shingle roofs.

Q. What is the life of wooden buildings in this climate and section of the country?

A. I have been living in Florida eleven years. I would not like to say further than that.

Q. Do they improve with age or deteriorate?

A. Naturally they would deteriorate.

Q. You would not say, then, that these buildings

were worth fifteen per cent more today than they were when you valued them will you?

A. I would not say that these particular buildings were worth more than fifteen per cent.

Q. Your valuation then was the valuation of the buildings as they stood at the time you made the examination or was it a reproduction value?

A. It was just as I said a short while ago. I put my valuation of these buildings as to what they would cost to build them.

Q. It was reproduction value then, based upon the cost of material and labor at the time you made the valuation?

A. Yes, sir.

Q. To reproduce each building new of the same character and kind as the building then stood?

A. That is correct.

Q. Has there not been some decrease in the cost of material since that time, effected principally by transportation?

A. I don't think there has been any material decrease in the cost of materials that enter into the construction of buildings There are certain materials which increase and decrease, in other words, there is a market fluctuation in the value of iron and steel but I don't think there has been any increase in the cost particularly of any class of material that enters into a building.

Q. As between the present time and the time you made these valuations?

A. Yes, sir.

MR. NEEDHAM: If your honor please, I have not had, of course, any time to go over this, I may want at a future hearing to recall this witness for a further examination after I have had an opportunity to look this over.

THE COURT: You reserve the right then of further cross-examination?

A. Yes, sir.

THE COURT: Very well.

Cross-examination.

MR. BOGGS: Q. Mr. Richardson, from the style and character of the majority of those buildings would you say that it was justifiable to add anything to your estimate for architect's services?

A. I most assuredly think it was justifiable.

Q. Well, for instance where there was an oil house or small shed on those buildings, would you think it would be fair to add 5 per cent for the cost of construction of that for the furnishing of plans by the architect and the supervising by an architect?

A. It depends on whether an architect would be called upon to make it. If he was it would be perfectly justified.

Q. Well, he would not be called upon as a practical business matter for the greater portion of these simple buildings, would they require calling on an architect for plans for each building?

A. Any railroad or corporation would either employ an architect or an engineer of its own and make a drawing for any buildings, no matter how small or large. I would say from that that it would be justified to add something to the cost, whether an architect made it or an engineer in the employ of the railroad.

Q. Are not a large number of those buildings identical with each other?

A. Quite a number of them.

Q. Well, one set of plans would do for a very large number of other buildings, would it not?

A. In some cases it would. Not a very large number, though because I can recall that while some of them are similar in construction they vary greatly in size and in dimensions, some are longer and some are wider and while the general construction is identical they are different in size.

Q. Has carpenter's wages increased at all points along this line of railroad.

A. I can only speak for the State generally. I

construct buildings throughout the State wherever I may get a contract, and carpenter's wages have increased generally I will say throughout the State, for instance I am doing work now in Tampa, and I find wages have increased there.

Q. That is more true of the large towns and cities than it is the small places is it not?

A. Well, that might follow, I don't know that is true.

Q. Do you know anything about the cost of concrete construction in Miami and the southern end of this line?

A. I know the cost of concrete construction generally and am able to estimate the cost just as well in Miami as I would be in Jacksonville, from the fact that I have to add the transportation to a certain point. The actual cost of doing the work would probably be about the same in one place as it would in the other but getting your materials from one point to another is simply a matter of adding or diminishing transportation.

Q. Isn't the stone used in concrete work in Miami produced locally?

A. Not unless it is specified. Not in all cases.

Q. Well, isn't all of the stone work used in the construction of the railroad buildings in Miami local stone in the concrete?

A. That I don't know, I don't think I should say.

Q. Well, did you take into consideration in estimating the value of buildings on the lower end of the line that the concrete work is made of local materials except as to cement?

A. I can't recall that I have taken that particular into consideration.

Cross-examination.

MR. ESTERLINE: Q. Mr. Richardson, I understood you to say that the value placed upon these buildings

would be the cost to rebuild them? Or what it would cost you to reconstruct them or rebuild them, do I understand that correctly?

A. My idea was what it would cost for a contractor either myself or any other contractor who knew his business.

Q. To replace those buildings?

A. Yes, sir.

Q. What it would cost if he did the work and furnished the material?

A. Yes, sir.

Q. Now, Mr. Richardson, don't you know that a railway company with its facilities is able to secure material at a very much less cost than it would cost you to secure them?

A. No, I don't know anything of the kind.

Q. You don't know that a railway company by purchasing materials in a single contract to take deliveries in the future at stated times could get that material at less rate than you could get it?

A. I don't believe they could. On the contrary I have made contracts with railroad companies and put up the buildings at less cost than their own engineers estimated it.

Q. You mean to say that you could build a station down here on the line of this railroad and furnish the brick and the sand and the concrete and the lumber and all for less than the railroad company could furnish that material?

A. I do say so, yes, sir. I think I can. I think I can build as cheap or cheaper than the railroad company can build it.

Q. And furnish all the material?

A. Yes, sir.

Q. You don't believe, you don't want it understood here from your testimony that the railroad company could buy any of these materials which go into buildings by a contract for enormous quantities at any less than you could buy them by the wagon load?

A. On the contrary I don't buy them by the wagon

load. I buy whatever that building requires, just the same as the railroad company would.

Q. Well, suppose you were not a contractor, suppose you were an ordinary contractor around in the community?

A. I can only speak for one contractor and that is myself.

Q. Then you speak as to replacing these buildings as to what you alone might be able to do?

A. I said before that was my opinion as a contractor and builder of 30 years' experience.

Q. Then you don't pretend to represent the general line of contractors in the contracting business and don't know how they might be able to take that work at less cost or higher cost?

A. We all figure pretty near about the same.

Q. If you were furnishing that material wouldn't you have to pay freight rates?

A. Most assuredly. There is exceptions made.

Q. And if you were to build the stations here or anywhere along this line of railroad, we will say to St. Augustine, and you were furnishing the material for the railroad, you would have to pay the freight rates on the material wherever it came from?

A. Yes.

Q. Now if the railroad company furnished that material if it was delivered in Jacksonville, there would be no freight rate to pay, you know that?

A. I don't suppose they would pay themselves any freight.

Q. So that if they purchased that material they would have the advantage over you in the freight rate, you don't question that, do you?

A. I won't question that.

Q. Now, then do you also know if they purchased that material off of the line of railroad, we will say at Chicago or anywhere in the country, and it was consigned to the Florida East Coast Railroad, if they have an arrangement, by which they get less rate on material than if you purchased it?

A. I don't know that.

Q. If that were true, then you would think they would have that advantage over you in that regard.

A. Possibly so.

Q. And the item of freight rates in material for long shipments is quite an item in figuring in contracts?

A. Very, very small as compared with the general contract.

Q. It is?

A. Very small.

Q. Well, what proportion?

A. It is nothing.

Q. I mean that you figure on it, don't you?

A. Sometimes.

Q. Sometimes and at other times it is too trifling?

A. We know what is costs f. o. b. Jacksonville or f. o. b. any other point and we add the freights.

Q. Do you ever make a contract that you don't figure the freights?

A. Of course, we figure the freight.

Q. Then it is a material item always?

A. A very small item, very small.

THE COURT: Your questions are based on theories?

MR. ESTERLINE: Your honor understands that I want to interrogate the witness on the advantage the railroad company has.

THE COURT: He has simply testified as to his estimate of the value of these properties to construct by him in that territory. Now, I can't see how your questions as to whether or not the railroad company—

MR. ESTERLINE: Well, the fact is, that if the railroad company bought this material and used it for construction, your Honor, I think it is a matter of common knowledge that they all do it, buy it in such quantities and use it in such quantities—

THE COURT: We have no fact to base that question on.

Cross-examination.

MR. HUDSON: Q. Mr. Richardson when you testified that the increased cost of labor and material was fifteen per cent greater now than it was in 1907 you mean that it would cost fifteen per cent more to build that building now than it would have in 1907, is that correct?

A. I think it would cost that much more.

Q. I don't mean as to amount but you mean that the difference in costs in 1907 and 1912 would be in your opinion about fifteen per cent?

A. That is my honest opinion.

Q. Well, you have already stated that there would be depreciation, what do you think the depreciation would amount to in that same period?

A. Well, I am not familiar enough with that to say about the depreciation.

Q. You think the depreciation of a building built four years ago would be fifteen per cent?

A. Well, I really don't know. I couldn't say about the depreciation of the building.

Q. When you examined those buildings, you didn't take into consideration the original cost at all, did you?

A. I simply looked at it as to what it would cost to reproduce those places, new, what it would cost a contractor to build them, what he would charge to build them.

Q. You had no knowledge of the original cost?

A. No, sir, none whatever.

(That's all)

Re-direct examination.

MR. ABRAMS: Q. Now, I want to ask a question in view of your cross examination, in making these estimates of lumber for instance that was based on yellow pine, was it not?

A. Yes, sir.

Q. Based on all heart exclusive of wind-shakes?

A. It was based on a good grade of lumber, of course, on what we consider the best grade of lumber.

Q. That would be all heart and free from knots and wind shakes?

A. Yes, sir.

Q. Now in your eleven years' experience in Florida Mr. Richardson, is it not a fact that all heart yellow pine free from knots and wind shakes will last for a good many years without any appreciable depreciation?

A. Yes it will last very much longer of course than sap will.

Q. Well, you didn't consider sap lumber in making your estimates did you?

A. No, not at all.

Q. Now, take any place, any building if kept in good condition, replacing any timber that was shown to be decayed and kept in condition of repair, would there be much depreciation in the value of that building in four and a half or five years?

A. I would say the percentage of depreciation in a new building in four or five years would be rather small. I would say that a building after it had gotten to be ten or fifteen years old it might depreciate more readily.

Q. Now you have been asked as to the rock down there, did you ascertain the facts that it cost more to quarry that rock than it did to carry other rock down there, did you take into consideration this coquina rock used there?

A. In some of that I did, where they were made of coquina. I figured that as coquina and was familiar with the cost of coquina.

Re-cross-examination.

MR. NEEDHAM: In answer to Major Abrams just now you stated that you had estimated on the basis of

good quality of pine, did I understand by that you substituted a better material than was used in the building on which you were estimating?

A. No, sir.

Q. You took the same materials in each case with reference to whether it was pine or hard wood?

A. I took the materials as I found them whatever the material was.

Q. And estimated on the same kind of material?

A. Yes, sir.

Q. Now many of these buildings were built in the early day I suppose?

A. I haven't any idea when they were built.

Q. Built when the road was constructed?

A. I haven't the faintest idea.

Q. But they were built when the road was constructed.

A. Do you make that as a statement or question?

Q. I make it as a statement. Now did you assume that the materials which they used at that time were as good as the materials that you had used?

A. Why, most naturally I would assume that they were just as good.

MR. HUDSON: Q. Do you think it reasonably possible that a building which had been standing for say ten years taking into consideration the depreciation and increased cost of materials could be worth forty per cent more than when it was built?

A. Forty per cent more? No I wouldn't consider it worth forty per cent more.

(That's all.)

(Witness excused.)

Thereupon the witness Courtland Buckman was recalled and having been previously sworn, testified as follows:

COURTLAND BUCKMAN.

Direct examination.

MR. ABRAMS: Mr. Buckman, did you make an estimate of the value of land 1907, when you made the other estimates of the property, the land without the buildings, occupied jointly by the Atlantic Coast Line and the East Coast Railroad on Bay Street, along Bay Street?

A. I did.

Q. How did you make those values?

A. These are the values that they paid for them.

Q. The amount of money you know they paid for them?

A. Yes, sir; that is what they paid for them.

Q. What do they aggregate?

A. $325,323.00.

Q. Has there been any increase in the value of that property since that time, since they bought them?

A. Yes, sir.

Q. About what increase?

A. At least fifty per cent in that locality .

Q. You think that a moderate estimate of increase?

A. I do.

Q. Have you taken all the lands that are there for that purpose?

A. The East Coast and the Coast Line Terminal.

Q. Is that all here?

A. Yes, sir.

Q. That would make a valuation of how much?

A. $487,984.00

MR. ABRAMS: We offer this in evidence.

(Filed in evidence.)

Cross-examination.

MR. NEEDHAM: Q. When were these purchases made?

A. I think some time in 1907, I think.
Q. All made during about that year?
A. Yes, sir; it took some little time to get them all in shape get them together, but they were all at that time.
Q. This represents as I understand it, the exact price paid in each instance by the railroad for the property?
A. Yes, sir, for that property.
(Witness excused)

Thereupon the complainant to further maintain the issues upon its part produced and caused to be sworn as a witness one A. L. Hunt, who testified as follows:

A. L. HUNT.

Direct examination.

MR. ABRAMS. Q. What is your name?
A. A. L. Hunt.
Q. Where do you reside?
A. St. Augustine.
Q. What is your business or occupation?
A. I am a civil engineer.
Q. Have you any connection with the Florida East Coast Railway?
A. Yes, sir.
Q. In what capacity?
A. As civil engineer.
Q. How long have you been connected with the Florida East Coast Railway?
A. About thirteen years.
Q. Did you in the latter part of 1907, or the early part 1908, prepare profiles of the right of way of the Florida East Coast?
MR. NEEDHAM: Now, your Honor, if these have been prepared by their engineer, I don't know that

we need take any time in questioning him in reference to it, if he states these are correct profiles we might save time by just allowing them to be introduced as profiles prepared by the railroad company.

Q. Has there been any change since that you know of?

A. Not that I know of.

THE COURT. At what time was that prepared?

A. In 1907.

Q. Those were prepared in 1907?

A. Yes, sir.

Q. You know of no change since that?

A. No, sir.

Q. That covers the line of road from Jacksonville to what point?

A. They go to Miami.

MR. ESTERLINE. It is understood we have the right to recall the witness and cross examine him and move to strike out.

THE COURT. Very well.

MR. ABRAMS. We offer in evidence blue print of the entire line of road.

(Filed in evidence)

Thereupon the complainant to further maintain the issues upon its part produced and caused to be sworn as witness one W. H. Chambers who testified as follows:

W. H. CHAMBERS.

Direct examination.

MR. ABRAMS. Q. What is your name?

A. W. H. Chambers.

Q. Where do you reside, Mr. Chambers?

A. St. Augustine, Florida.

Q. What is your profession or occupation?

A. Comptroller of the Florida East Coast Railroad.

Q. By virtue of your position, do you have control of the books of the company?

A. Yes, sir.

Q. Mr. Chambers, have you ascertained what the cost of the right of way from Mayport and branches, to Homestead up to June 30, 1907?

A. Yes, sir; I think you will find it right there.

Q. Is this a tabulation of that cost?

A. Yes, sir; the cost of the road up to June 30, 1907, cost of land and equipment was $15,217,202.30.

Q. That represents money expended by the road on that?

A. Yes, the land and equipment.

MR. ESTERLINE. Your Honor, I think before the witness states this, I think before those figures go in the witness ought to state how he made the values.

THE COURT. It is not a question of values, it is the question of what the Company spent, as I understand it, is not that it?

A. The account as it appears on my books.

Q. Now, how did you arrive at those figures?

A. Well, from various causes. From the books, that represents most of the cost of the road up to that period, up to June 30, 1907.

Q. How did you aggregate those figures?

A. I don't understand what you mean.

Q. I find here you have given cost of line to June 30—

A. That represents the various departments.

Q. Now, I find the cost of equipment $2,627,000.00, how did you get those figures?

A. From the various charges of equipment gotten through that period.

MR. ABRAMS. I want to offer this as the aggregates of cost derived from the books of the Company.

MR. ESTERLINE. Now, your Honor, I object to this going in as a statement. It is made up, as the witness has stated, and necessarily must be, from items upon the books, covering a considerable period of time. We are entitled to those items.

Q. Now, look at this, Mr. Chambers, here is a copy of the aggregate lands purchased, I just want to put that in of course, subject to our showing—

Q. Can you state from your books what lands have been purchased by your company for railroad purposes since 1907?

A. Yes, in 1908, $5,283.33, in 1909, $966.950. in 1910, $300,000, in 1911, $54,209.44, and from July 1st, to November 30, 1911 $19,425.53.

Q. That makes an aggregate of what?

A. Making an aggregate of $91,577,084.00.

MR. ABRAMS. I will file that in evidence.

MR. NEEDHAM. That is objected to on the ground it contains no description of the property.

THE COURT. Can you state the location?

MR. ABRAMS: It does give the location if the Court please.

THE COURT. Q. You know at what places?

A. Yes, sir, I know at what places.

Q. And they are stated in this schedule?

A. They are stated, at least the last three years, the first two years the amounts of the purchases were small and the locations are not given, but the last three years the locations are given.

MR. ABRAMS: Q. Do you know anything about these lands?

A. No, I don't know, except I understand they are for railroad purposes.

MR. ESTERLINE: I move to strike that, the witness says he understands they are for railroad purposes.

THE COURT: I will not strike that out. Exception noted for the Government.

MR. NEEDHAM: It would be impossible to cross-examine this witness without going through the records in each of these cases and finding out what the property is.

THE COURT: Very well.

Thereupon the hearing was adjourned without day.

State of Florida, County of Duval.

Personally appeared before me Raleigh C. Dowling, who being duly sworn, says that he is the stenographer who took the testimony of the witnesses before Honorable R. W. Archbald in St. Augustine, Florida, and that the foregoing is a true and correct transcript of the testimony so taken by him.

RALEIGH C. DOWLING.

Sworn to and subscribed before me this 30th day of March, 1912.

LOU BECCA PINNELL,
(Seal.) *Notary Public State-at-Large.*

My Commission expires Jan. 27, 1915.

Testimony taken in St. Augustine, Florida, on March 15, 1912, *et seq.*, before his Honor JUDGE HUNT, Associate Judge, United States Commerce Court.

Thereupon the Petitioner to further maintain the issues upon his part recalled as a witness W. H. Chambers, who having been previously sworn, testified as follows:

W. H. CHAMBERS.

Direct examination.

MR. ABRAMS: Q. Mr. Chambers, you were on the stand when the Court took a recess at the previous hearing and were instructed to prepare a tabulation of the Plant account of the East Coast and forward copies to the Attorneys. You gentlemen have received those copies?

MR. NEEDHAM: Yes, sir.

Q. Is this a copy of the report you sent to Washington?

A. Yes, sir.

MR. ABRAMS: Now, I propose to offer that in evidence.

MR. ESTERLINE: If your Honor please, the United States enters an objection to the making or receiving of any evidence or to the taking or receiving of any further evidence in this case, apart from and independently from the record and evidence and proceedings had and taken before the Interstate Commerce Commission on which it made its report and on which it entered its order now thought to be set aside and annulled on the grounds that the Commerce Court is without power or jurisdiction to review the order of the Interstate Commerce Commission or to set aside and annul the same, on any other evidence or records or proceedings except the evidence and the records or proceedings had and taken by and before the Interstate Commerce Commission on which its said order was faced.

THE COURT: You may interpose that objection, so that the records will show that it was ruled on. It will be overruled subject to objection and exception of the United States.

MR. ESTERLINE: If your Honor please, this objection to extend to and cover any answer by each witness produced and sworn by and on behalf of the Petitioner the same as if made specifically at the time said question is asked and such answer is made.

MR. ABRAMS: We will agree to that.

THE COURT: Yes.

MR. ABRAMS: I will place in evidence this plant statement identified by the witness.

THE COURT: You are now on the question of the Florida East Coast proper, at what point are you now?

MR. ABRAMS: We are now taking up the question of the Plant account for the purpose of explaining it, if your Honor please. Perhaps it may be better for

me to more fully state as I did in Washington that this East Coast was made up by the acquisition of these short lines of road and in the purchase of them the cost of construction does not appear, simply the sum of what Mr. Flagler paid regardless of what they cost, and we propose to show that that cost is larger than the amount appearing on to the addition on to the valuation.

MR. NEEDHAM: Now, if your Honor please, in behalf of the Commission, we call for this statement of the Plant account or the property account showing the cost of the Railroad property, and I mean by that the property put to the use of the public for transportation and this is furnished on that call.

I want to enter a general objection to any testimony showing or tending to show that the cost of the road is more in any particular than is shown upon the books of the Company. That is to say, that although they may have bought a piece of road as was stated at a foreclosure sale and purchased it for less than that road had cost up to that time, it cost the Company what they paid for it and presumably that was the value of the road at that time. And has passed through a period of use and therefore the value at that time was what was paid for it. Now, they may add and have added here to these items and properly since the purchase, all the items of expense they have gone to in improving those lines and making them what they are to-day. Those expenses are properly chargeable to the property account because they are a part of the investment in the property and are not simply repairs. It belongs to the equipment account. I object to their going back for the purpose of showing, prior to any foreclosure the road may have cost the former Company more to construct. There are two lines of evidence which have been pursued here and properly, one is the cost of the road which is under construction, and that means what this Company has paid out for this road. That does not determine its value,

that is one of the items which must be considered in fixing the value, that is in determining the value. The other is the cost of reproduction now.

THE COURT: We will go ahead with the testimony and let it go in subject to the objection of course of Mr. Needham.

Q. Now, Mr. Chambers, I find on this first item capital stock, two hundred thousand dollars bond account three hundred thousand dollars, less a credit of twenty thousand dollars; explain to the Court what that means.

A. Well, I suppose—

MR. NEEDHAM: Well, now, I object to that; do you know of your own knowledge anything about it.

A. That was before my time there.

MR. NEEDHAM: Then, I object to his testimony. He is undertaking to state, your Honor, just what this means. It is a question of facts what that credit means. It is not a question of expert testimony.

THE COURT: Why not? To an ordinary man there is nothing on that paper to faze to an untutored mind anything more than a debit or credit. Why can't he explain it?

MR. NEEDHAM: Because he doesn't know.

THE COURT: Well, that is another thing if he doesn't know. He is testifying now without knowing, of course, he can't do that. He has got to give his opinion as an expert bookkeeper.

MR. ABRAMS: At that time there was only the road between Jacksonville and St. Augustine existing and this evidently is the capital stock and bond account of that road. Does your books show the entire construction of the cost of that road?

A. Not of that, part of the road, not of that part of the road, no sir.

Q. This is all then that represents, the road from Jacksonville to St. Augustine?

A. From Jacksonville to St. Augustine.

Q. Have you got on your books or anywhere any aggregate of what this road cost to construct?

A. Well—that is all I have got of the original cost of that road.

Q. Was this road originally the Florida East Coast Railway?

A. It was the Jacksonville and St. Augustine and Halifax River Railroad.

Q. A different corporation from this originally?

A. Yes, sir.

Q. Now, Mr. Chambers, I see a series item aggregating two million three hundred and forty-nine thousand dollars which appear on the second page of your statement of the Plant account and charged off. Do you know anything about that?

A. That entry was made under instructions from the New York office. That is cancellation of the bonds charged to Plant account and credited to Plant account.

Q. Do you know what bonds these were?

A. Well, you see here.

Q. These bonds have been charged off entirely.

MR. NEEDHAM: Oh, there is no question about that it shows very clearly.

THE WITNESS: These are the St. Augustine and the Halifax Railroad bonds, two hundred and fifty thousand dollars.

Q. I see here on the first page St. J. & H. Railroad Company, 4950, what does that mean?

A. That represents the cost of that St. Johns and Halifax Railroad, the reconstruction up to that time.

Q. I find to account of St. A. & H. Railroad.

A. That is the same thing, the railroad from here to Palatka.

Q. That makes three of the roads that I have named.

A. That is three of them, yes, sir.

Q. I find here on the first page A. & W. Railroad, one thousand dollars on the first page, what road does that refer to?

A. That was the purchase of the road from New Smyrna to Orange City Junction.

Q. Now, can you state what the length of that line is?

A. I think it is about twenty-eight miles I think, something like that.

Q. Does that cover what the books show that entire twenty-eight miles cost?

A. That is what they paid for it.

Q. Did that include everything on the road, its road bed, equipment and everything?

A. Everything, yes.

Q. I find another item on the third page, in the year 1903, Southeastern Railroad, seventy-four thousand nine hundred dollars, what does that represent?

A. That was the purchase of the road from Titusville to Enterprise.

Q. Do you recall the mileage of that road?

A. About thirty miles, I think.

Q. Isn't it thirty-five according to the Government mile post?

A. Probably thirty-five.

Q. Now, does that represent what the books show the entire cost of that road?

A. It shows what we paid for it.

Q. Including the road bed and equipment?

A. Everything there was, yes, sir.

Q. This was the only item showing what was paid for that road?

A. That is the only one.

Q. When did you first begin keeping the books of the Florida East Coast Railway, Mr. Chambers?

A. In 1888, I guess.

Q. The cost of construction and the cost of these roads, do you know where those items were kept, were there any other books kept except those you kept here?

A. Except those kept in New York, and Mr. Flagler's own books.

Q. Now, as I understand you testified before, this item here are charges you received from New York and instructed to charge them.

A. Yes, sir.

Q. Now, in the matter of statement of equipment, this is the equipment as shown by you as having been purchased from time to time with the amounts charged off, cars destroyed or burned, showing a total net of two million nine hundred and eighty-five thousand five hundred and fifty-six dollars and seventeen cents, including what was not put into equipment account at the time you made that report?

A. Yes, July first. This item here is subsequent to this report here, making a total up to November 3rd, of two million nine hundred and eighty-five thousand five hundred and fifty-six dollars and seventeen cents.

Q. Now, as I understand it you put nothing on your books until you had received the vouchers?

A. That is right, no matter when the purchases, I don't know anything about the purchases at all, but I get the vouchers.

Q. Now, since you made that report, have you received the vouchers for any other equipments that were purchased last year?

A. Yes.

Q. Have you got the items with you?

A. I think about three hundred and fifty thousand dollars' worth.

Q. Well, have you got the items?

A. I think I have.

Q. Look at this and see if that is the aggregate.

A. Three hundred and fifty-seven thousand dollars.

MR. ABRAMS: We offer that in evidence.

Q. Now, kindly add with your pencil this aggregate—I will state to you, Doctor, the last item on this was a number of locomotives. There were no locomotives on this at all—three hundred and fifty-seven thousand four hundred and eighty-two dollars

and thirty-six cents, add that, what does it aggregate?

A. Three million three hundred and forty-three thousand nought forty-eight dollars and fifty-three cents.

Q. That is the amount your books show the equipment cost the Company?

A. To date.

Q. Have you prepared a statement showing what amount of stock and material you had on hand on the 31st of December, 1911?

A. Yes, haven't you got that?

Q. Have you got it with you?

A. No, I don't find it.

Q. You left it in your office?

A. I gave it to you I think.

Q. I have got it here, I thought you made some carbons.

A. No, I didn't make any carbons.

Q. Have you any carbons of all of this?

A. I don't think so.

Q. What is that statement?

A. This is a statement of material and supplies on hand December 31, 1911.

Q. Is it your custom in a matter of this as in regard to the other matters to put anything on your books until you get the vouchers?

A. Yes, sir.

Q. Then, no matter how much has been purchased, if you haven't got the figures, it does not appear?

A. No, sir, it is not in my books.

MR. ABRAMS: I offer this in evidence. I will state to counsel why. Because it is fifty odd thousand dollars more than appears at the time the report was taken.

MR. NEEDHAM: Much of this might have been paid for. You are not introducing this as a part of the cost to show what you had on hand for the purpose of valuation.

MR. ABRAMS: Certainly, of course.

MR. NEEDHAM: I don't object to that.

MR. ABRAMS: Well, it is a part of the cost.

MR. NEEDHAM: I want it understood that this might have been paid for, but if they are introducing it as a schedule of what they had on hand for the purpose of valuation, it is competent.

THE COURT: What is it, equipment?

A. Material and supplies.

MR. ABRAMS: Now, I will state to your Honor this: It does not appear on there until it is vouchered to him. For instance, I know of two hundred thousand dollars of field rail for this main line from Jacksonville to Miami, but it does not appear there because it is not vouchered.

THE COURT: That is the total amount of equipment on hand?

A. Material and supplies, not equipment.

MR. ABRAMS: Shop material, railroad material, ties, etc.

THE COURT: Well, it will be admitted for what it is worth.

MR. NEEDHAM: It don't go to the question of cost that you have testified to, but it goes to the question of stock on hand, which Col. Elliott testified with reference to the condition in 1907.

MR. ABRAMS: Yes, sir.

MR. NEEDHAM: And he testified with reference to the value of stock on hand at that time. Now, this is to show as I understand it that it is simply the stock on hand on December 31, 1911.

MR. ABRAMS: Yes, on present values.

Q. All this represents purchases that have been vouchered to you?

A. Yes, sir.

Q. And nothing at all that has not been vouchered to you.

A. No, nothing at all that has not been vouchered to me.

Q. Now, Mr. Chambers, have you prepared a

statement showing the amount of business contributed to the main line from Jacksonville to Miami by all branches except the extension to Key West?

A. I had prepared that statement, yes.

Q. Look at this and state what it is.

A. Well, it is the amount of business contributed by the branch lines to the main line.

Q. Does that include the extension from Miami south?

A. It does, yes.

Q. Where is it from Miami, south?

A. There it is.

Q. Now for what years?

A. From 1901 to 1911.

MR. ABRAMS: I offer that in evidence. I offer this in evidence to show that the Key West extension did more than all the other branches put together to the main line.

Q. Have you got a statement as to the betterments and improvement put on the line from Homestead to Mayport, since June 30, 1907?

A. I think so.

MR. NEEDHAM: You mean to the Jacksonville and Mayport line running out to the ocean?

MR. ABRAMS: Yes.

Q. What were those betterments for the year June 30, 1908?

MR. NEEDHAM: Does that differ from that statement in any particular?

A. No, it is all included in that statement of equipment?

Q. Is it all here?

A. Yes, sir.

MR. ABRAMS: I will explain this; for instance, in that statement you have got there Mr. Elliott testified to present values of 1907, June 30th. Now, there has been a capital added since then and I propose to add that to the values that existed at that time.

MR. NEEDHAM: I just wanted to understand what it is. Do you mean to say that the figures extended

there are more than the cost as shown in this statement?

MR. ABRAMS: Oh, necessarily. For instance, in round figures, Mr. Huger and Mr. Elliott estimated the then value of the road without the equipment. They kept the equipment separate you know, in round figures, it was ten million. Now since then we have added betterment.

MR. NEEDHAM: I understand that part of it, but I want to get at whether the figures you are offering is the value or whether they are cost.

MR. ABRAMS: This statement purports to show what the books show it cost the road. My figure is going to show the present value of that property.

MR. NEEDHAM: Well, then, I object because there is no evidence whatever that Mr. Chambers is an expert on valuation. He is a bookkeeper—

THE COURT: You are not having him testify to the value of the betterments without testifying to the cost?

MR. ABRAMS: Oh, no, sir, that is a question of law, and the question to be determined hereafter in connection with other testimony. For instance, Huger, Elliott, estimated on the 13th of December, 1907, it would have cost to replace that road just as it was except certain matters, seven million dollars from Jacksonville to Homestead with the branches. Since then we have added betterments not included in the report, for instance we have put up buildings.

MR. NEEDHAM: I just wanted to get at whether that is the cost and whether it agreed with this.

MR. ABRAMS: That is the cost, the additional amount extended on this road.

MR. NEEDHAM: Very well, then, I have no objection to it.

Q. Now, then, state what was paid on betterments, I am not speaking of equipment.

A. For the year 1907, one hundred and sixty-seven thousand one hundred and sixty-three dollars.

Q. Now, since June, 1907?

A. Well, that is all since June.

Q. What is the net?

A. The net is this here. The net shows here, eighty-four thousand six hundred thirty-eight dollars and ninety-seven cents.

MR. NEEDHAM: Q. For what period, Mr. Chambers?

A. For the year ending June 30, 1908.

Q. How much were the betterments for the year ending June 30, 1909?

A. Two hundred and forty-seven thousand nine hundred and seventy-five dollars and seven cents.

Q. How much for the year ending June 30, 1910?

A. Two hundred and thirty-seven thousand, two hundred dollars and seventy-four cents.

Q. For the fiscal year ending June 30, 1911?

A. Four hundred thirty thousand, six hundred and thirty-eight dollars and twenty-nine cents.

Q. What is it up to the last item there?

A. From July 1st to November 30, 1911, three hundred and twelve thousand one hundred and forty dollars and seventy-four cents.

Q. Now, go on and make the same statement with reference to the equipment what is shown since June 30, 1907.

A. In 1908 there was a credit of equipment of four thousand five hundred and twenty-eight dollars. In 1909 there was a credit of equipment of ninety-one thousand six hundred and seventy-two dollars and sixty cents. In 1910 there was a charge to equipment in addition, one hundred four thousand, nine hundred and sixty-three dollars and fifty-one cents, and for the year 1911 there was an addition of sixty thousand, seven hundred and fifteen dollars and fifty-nine cents, and for the period of July 1st to November 30, 1911, the addition was two hundred and eighty-nine thousand, nought eighty-six dollars and forty-eight cents.

Q. Now, Mr. Chambers, this is from November 31st?

A. No, sir, November 30th.
Q. Are these items on the report here?
A. The three hundred and fifty-four thousand, four hundred and eighty-two dollars and thirty-six cents included in these?
A. Yes, sir, some of the figures.
Q. Are they included in here?
A. Yes, sir.
Q. That brings you up to November 30th?
A. Yes, sir.
Q. These are since November 30th?
A. No, that is to November 30th, to correspond with this here.
Q. You said not included.
A. Yes, sir, I think it is the same amount.
Q. This is the other items not included?
A. Oh, that is the item since January 1st.
Q. That had to be added now.
THE COURT: That brings it up to over three million.
A. Yes, sir.
Q. Now, will you figure it out and show the aggregate added to the road since June 30, 1907, up to November 30, 1911, shown by these reports and the aggregate added since June 30, 1907, included in this item of $357,482.36.
A. What was it you wanted, the sum of these different years?
Q. The aggregate and this three hundred and fifty-seven thousand dollars to the equipment account, what is the aggregate amount for betterment amounting to on the road since June 30, 1907?
MR. NEEDHAM: Between what points do you mean?
MR. ABRAMS: That is on the main line from Homestead. We are not discussing anything else now, from Homestead to Jacksonville and branches.
A. The entire thing, the entire road from Jacksonville to Homestead and the branches?
Q. Yes.
A. Well, I make it $1,339,593.81.

Q. What is the amount extended for equipment?
A. $716,049.46.
Q. In making that statement, did you deduct the equipment and, etc., that were sold?
A. I deducted the credit.
Q. Then this is the net?
A. Yes, sir. This is the net charge to equipment and betterment.
Q. These figures in red ink represent the amount charged off?
A. Yes, sir.

MR. ABRAMS: I offer that in evidence now.

MR. BOGGS: If it may please the Court, now that the complete nature of these exhibits is apparent, we would like to interpose an objection upon the following grounds: There are two separate and distinct elements the Petitioner is undertaking to prove in this line. One is the value which can be proved by expert testimony and the other is the cost which is the matter of bookkeeping. Now, they have put in evidence testimony as to the valuation by expert on June 30, 1907, and they propose to supplement that by crossing over into the bookkeeping department and proving the cost of what has been added since then. We can find the cost to-day if they would get at it in that way, by using the cost in 1907 and the cost since that time, or they can get at the valuation to-day by adding to the value in 1907, the valuation of what has been added since that time, but in showing the valuation they must take into consideration the question of depreciation of the articles that are added since that time, since they have been put in.

THE COURT: Are we dealing with costs now?

MR. BOGGS: No, sir, it has been stated that the object of this exhibit is to add to the expert valuation put on in 1906. And the cost of what has been added since then in order to determine the present valuation.

THE COURT: Go ahead with the testimony, gentlemen.

MR. ABRAMS: If the Court please, I will explain. I don't think there is anything more notorious in the United States than that values have largely increased in almost everything in the last five years until they are to-day at their maximum probably, except so far as railroads are concerned, one specific item, steel rails have remained uniform in price. The price of labor have enormously increased, the price of all material alike, lumber, timber, everything, for instance, as we will subsequently show how practically impossible it is for railroads in this State, especially to secure the necessary grades of lumber and other things that we are compelled to put on steel. Now, then—

THE COURT: Well, that is precisely the object of this testimony which has just been introduced.

MR. ABRAMS: We propose to show afterwards there has been no depreciation in these values over what they cost in the several years at the time they were put in. Now, I don't understand what Counsel means by talking about depreciation. You are compelled every year to put tracks on the road beds in ordinary operating expenses, which would have depreciated during the year because of the safety of the railroad and its sufficiency as a working proposition is required to be kept up at all times as we propose by other witnesses to show. For instance, I will illustrate: We have seven hundred odd buildings upon the line of that road. There is an inspection of every one of them every year and any defect showing in any one piece of timber is immediately taken out and a new piece put in, and we are compelled to keep those buildings of that roadway in the same condition as it was the day it was first put up.

THE COURT: Now these items that have been testified to by Mr. Chambers, do they represent actual money paid out for cost less the depreciation?

MR. ABRAMS: Oh, no, we are going to show there

is no depreciation, because in the first place the oldest of those—

THE COURT: That is the actual cost without any depreciation whatsoever?

MR. ABRAMS: None whatsoever, because we propose to put the man on for that purpose to show the character of the inspection and the necessity for keeping up that inspection, and that deficiency, for keeping up, that same deficiency which existed at the time—

THE COURT: Well, proceed, gentlemen, with the testimony.

Q. Now, Mr. Chambers, going back to the extension to Key West can you give me a statement of the business contributed by the extension to the main line from Miami north, since June 30, 1911, up to February 28, 1912, with a comparison of the business done in the previous years during the same period of time?

MR. NEEDHAM: Now, I want to object to the question on this ground. The use of the word extension, the books of this Company and the valuation which has been introduced and supplemented by this testimony now speaks of the extension and treats it as from Homestead, which is twenty-eight miles south of Miami. This was in the valuation, the reproduction valuation which Col. Elliott gave and which has been supplemented by the cost of betterments by this witness, treats the main line as from Jacksonville to Homestead and extension as from Homestead to Key West, and the books of the Company show that to be their extension account.

THE COURT: What is the distance from Miami to Homestead?

THE WITNESS: Twenty-eight miles. Homestead is really the last large station on the main line. There are two or three small ones beyond it.

THE COURT: Q. What are your books based on, the Homestead or Miami?

MR. NEEDHAM: I want the witness to state that, I want to ask the question.

THE COURT: Q. What do the books show, from Homestead or Miami?

A. The books originally was begun from Miami because Miami was the terminus of the road for years.

Q. What do they show, what are these statements based on, Homestead or Miami?

A. The books show that we extended to Homestead and stopped for two or three years.

(After informal argument.)

MR. NEEDHAM: I would like to ask the witness a question, if I may, it will clear up this matter I think. Q. Did you have an account on your books known as the Key West extension?

A. I do.

Q. Showing all cost made for the cost of the road, you have such an account?

A. Yes, sir.

Q. Where does it extend?

A. That account starts from Homestead, south.

Q. What is the account known as into which such charges were made for the cost from Miami to Homestead?

A. We call that the Homestead extension, the Cutler extension and then Homestead.

Q. They are the Cutler and Homestead?

A. Yes, sir, it was first the Cutler extension.

Q. The Key West extension on your books is from Homestead to Key West?

A. Yes, sir, when we started operation we just put it in in the new name. We have been extending all the time to 1386 you might call it all one extension.

MR. NEEDHAM: If your Honor please, I don't object to them showing these facts, but the only reason we have insisted upon Homestead was that that was the way the book appeared and to make these matters separate and distinct unless they keep them separate as they are treated on the books. I don't object to their showing the exact facts.

THE COURT: Go ahead now, and let's let the witness testify as I understand it.

MR. ABRAMS: Q. Before you testify, will you state how you derived these figures?

A. I derived them from the earnings of the road.

Q. From what?

A. From the earnings of the road on a mileage basis. This is a comparative statement showing the earnings for eight months, ending February 20, 1911, to February 29, 1912, from Miami, south.

Q. To where?

A. As far as it went—it didn't go to Key West in 1911.

Q. Now state what it showed.

A. Well, this shows an increase of 1912 over 1911 of Miami, south, of seventy-one nought twenty-two, and twenty-nine cents.

Q. How is it from Homestead?

A. For the same period from Homestead, south, the increase was $63,520.80.

Q. Well, the entire increase of seventy odd thousand dollars less the eight thousand was north of Homestead?

A. Yes, or the first increase.

MR. ABRAMS: I put that in evidence now.

Q. What do you mean by the total earnings as you have just used that expression, how do you make that up you spoke of, for instance over ninety per cent would be ascribed to the road below Homestead and approximately the balance between Homestead and Miami, you spoke of earnings, what do you mean by earnings?

A. Well, the passenger—

Q. Passenger and freight?

A. No, passenger earnings, the freight is based on a mileage basis of the through road.

MR. NEEDHAM: That is to say that you have taken the entire earnings of the entire system?

A. Oh, no, going over that portion of the road only and figured it on a mileage basis of the other road.

Q. You have just taken the earnings south of Miami in one?

A. The earnings south of Miami.

Q. And then distributed those total earnings of the entire mileage of the road?

A. Distributed the earnings in that proportion of the total amount.

Q. Without regard to whether or not the earnings was for freight or passengers going over the entire line?

A. Well, as far as passengers going, that is the actual train earnings, the freight is based on a mileage basis.

MR. NEEDHAM: I don't quite understand how that is arrived at. Let me ask you a question. In making that passenger earnings, did you take the ticket report showing, say a man left from Jacksonville and went to Key West—

A. No, sir, this is made from the ticket collection and the mileage of those inspections at the different rates and where that passenger went to.

MR. NEEDHAM: For the mileage south of Miami in one instance and south of Homestead in another?

A. Yes, four cents south of Homestead.

Q. Now, the freight division, I didn't quite catch that.

A. Well, the freight we will say from Key West to Jacksonville we take that one hundred and twenty-three miles of the five hundred and twenty-three or whatever it was—

Q. Of the total charge?

A. Of the total charge. Then take the Miami estimate or statement here the division between Miami and Homestead and the division from Homestead on is on the basis of mileage and not on the basis of any actual contribution of business.

A. No, that is estimated on these lines.

Q. A considerable portion of this then might come from the twenty-eight miles and not from the hundred and twenty-two?

A. Oh, yes, we don't get it all on one hundred and twenty-two miles.

Q. There is just one other question I want to ask. This represents freight originating or destined to points south of Miami in one instance and in another, originating and destined to points south of Homestead as I understand it.

A. Yes, sir, north and south.

Q. Now, would the difference between those two statements represent the freight originating and destined to points between Miami and Homestead?

A. Yes, sir, that is what it would show.

MR. ABRAMS: Of course, Doctor, this embraces a period when the average shipment is not at its highest.

MR. NEEDHAM: Yet, it embraces a period, of course, when the Key West extension was not in operation.

MR. ABRAMS: Well, for one month. We went in the 22d of January.

THE COURT: When did you actually open that Key West extension?

A. January 22d.

Q. Prior to January 22d how were you operating there?

A. We were operating as far as Knights Key and by boat from there to Key West and Havana.

Q. Taking freight and passengers as far as Knights Key?

A. Yes, sir, and by boat from there on.

MR. ABRAMS: Q. Now, look at this and state what it is.

A. That is a comparative statement of wages for the year 1901 and 1907.

Q. What do those show?

A. Well, that shows a large increase to 1907.

Q. Over 1901?

A. Over 1901.

Q. Shows a comparative statement showing cost of 1901 wages, etc., and the increase in 1907, and for the amount paid during those years.

A. The amounts of the pay roll, yes, sir.

MR. NEEDHAM: When you say "Year," what do you mean?

A. Ending June 30th, the fiscal year.

MR. ABRAMS: Now, what is this?

A. Well, that shows the pay roll and wages for 1911.

MR. ABRAMS: I offer these papers in evidence, if your Honor please. To show the large increase in wages and salaries, and per diem since 1901, in 1907, and the still larger increase in 1911 from 1907.

MR. NEEDHAM: That as I understand it is taken from your books, they are shown by the books?

A. Yes, sir.

MR. ABRAMS: Is that taken from the books?

A. Yes, sir.

Q. To what date is this?

A. Doesn't it say?

Q. In 1911?

A. June 30th, that is for the fiscal year.

Q. Can you state whether there has been since June 30, 1911, any increase of the wages paid to the men of your own knowledge?

A. There has been some, yes.

Q. Do you know to what class of workmen?

A. I know the clerks got a small increase.

Q. How about the firemen, engineers and flagmen?

A. I don't know about those.

Q. You have no personal knowledge of that?

A. No, sir.

Q. That is not yet on your books?

A. I don't know anything about it. I don't know whether they got an increase since then or not.

MR. ABRAMS: This I am going to offer now appears as exhibit in our Petition but I suppose we will have to offer it in evidence, and I will state to the Court the purpose of it. We want to show the source from which we derive freight and I would explain to the Court why. The State Railroad Com-

mission has always recognized the situation of the Florida East Coast Railway and has always allowed it a higher rate of freight than they allowed the Atlantic Coast Line or the Seaboard Air Line because practically nothing originates in the shape of freight on the line of the East Coast except perishables, while the other roads handle large quantities of cotton, naval stores, timber, lumber, and enormous quantities of phosphate, none of which except a small amount of naval stores exist in the East Coast at all, and therefore—

MR. NEEDHAM: Your Honor, there is no objection to this; I don't understand why it is being argued.

THE COURT: Put it in then.

MR. ABRAMS: I put in evidence the tables showing the tonnage, material passengers and freight of the Atlantic Coast Line Railway and of the Seaboard Air Line Railway for the fiscal year ending June 30, 1910, and June 30, 1911, with certificate of from the Secretary of the Railroad Commission of the State of Florida that those are taken from the sworn reports made by those two Railroad Companies to the Commission for those fiscal years.

MR. ABRAMS: I offer the report of the equipment in use up to November 30, 1911, and then add this equipment we have put in as being additional, this last purchase, which is vouchered last month or in January.

Q. State what that is.

A. That is a statement of equipment, November 30, 1911, number of locomotives and cars.

Q. What does that give, Mr. Chambers?

A. What does it give, you mean what does it cost?

Q. Oh, no.

A. It gives the different classes of equipment, passenger cars, freight cars and other cars.

MR. NEEDHAM: Now, if your Honor please, with reference to this, I would like to ask a question or two to see whether I want to object.

Q. Is this an inventory of the equipment now in use.

A. November 30th, yes.
Q. Did you make the inventory?
A. It was made in my office.
Q. From what sources?
A. From the actual—Well, from our Master Car Builder.
Q. Well, is it made up from the books showing the purchases or is it made from actual observation of the cars in the yard?
A. Actual cars in service.
Q. That was made up by whom?
A. By one of the men in my office.
Q. Detailed by you to do that?
A. Yes, sir.
Q. Who made it?
A. Mr. Pomar, I think, made it, he is my Auditor and I think he made it.
Q. Do you know how he made it?
A. Well, we know what cars are in service, our Master Car Builder and our Car Accounter keeps track of the cars in service.
Q. Then this was made up from that statement?
A. Yes, actual cars in service.
Q. Made up from the statement of your account?
A. Yes, from our account. It represents the actual cars in service.
Q. As shown in your account of car service?
A. Yes, sir.
MR. ABRAMS: Now, this doesn't include the last three hundred and fifty-seven thousand dollars?
A. It is only up to November 30th.
Q. That equipment since vouchered to you is in addition to this?
A. In addition to that, that is shown here.
(That's all.)

Cross-examination.

MR. NEEDHAM: Q. When did your service for the company begin?

A. I have been with the East Coast since 1887.

Q. What time?

A. September.

Q. September, 1887?

A. Yes, I was then with the St. Augustine and Palatka road, and Mr. Flagler bought that road the following year and I went with him.

Q. How long were you with that road?

A. I was with it from 1887 to the time we sold out to Mr. Flagler in December, 1888.

Q. One year?

A. Just about one year and three months, yes.

Q. So far as any fact appearing upon this statement prior to your taking charge of the books, you have no personal knowledge?

A. No personal knowledge, no.

Q. You have stated that some of these accounts were transferred to the books in New York, were the books prior to 1888 kept in New York?

A. Those items there were sent to me with instructions to make the entries here on my books.

Q. Do they keep books of account in New York?

A. Presumably they do, I have not seen them.

Q. You don't know?

A. I don't know.

Q. Since 1888 have they kept a set of books in New York, have they kept the set of books in New York in addition to these?

A. Mr. Flagler has his own books or had some, I don't know.

Q. Do you receive items from New York now with directions to enter them on the books here?

A. No, I haven't for a long time.

Q. Since what time?

A. Oh, not for some years.

Q. Can you give the time?

A. No.

Q. How long after you took charge did you receive instructions from New York to enter items on accounts on the books here?

A. Well, only those items that are called to attention in exhibit.

Q. Outside of the items you refer to on the cross-examination, being there entered are made by you upon the books by directions from New York?

A. Yes.

Q. Could you tell us what they are?

A. I can, yes, I think.

Q. I mean now, subsequent to your commencing your service with this Company?

A. Well, this item here came from New York, certifying bond.

Q. On page one, under what date?

A. Under date of 1889, May 31st, 1889. Of course, that is information. I was advised of that purchase in New York. Now, there is an item from New York of commission paid on bond dated October 31st, 1897, and recording mortgage $38.33, aggregating $49,244.96. There is an item there of "property loss charged off" June 30th, 1899.

Q. How much is the amount?

A. $789,455.29. There is another item here same date of "Property loss charged off," $92,444.56, and the two following small items. 1903, June 30th, net earnings to Plant, $580,573.34. Interest on capital stock, $275,000.00. Mayport Terminal Company stock, $23,205.66. Property purchased from H. M. Flagler, $88,114.57. Loss on sale of bonds, three million dollars. Fees account of bond issue, $1,201.00, and B. & O. Steamship Company's stock, $556,647.00.

MR. ABRAMS: That was taken out afterwards?

A. Yes, sir, that was taken out afterwards. Now, here is Engraving Bonds three thousand, three hundred and seven dollars. Southeastern Railroad, seventy-four thousand, nine hundred and four dollars and twenty-three cents.

MR. ABRAMS: That is the Titusville road?

A. Yes, sir. Engraving Bonds—

Q. The one before that.

A. Those don't come from New York. They went to the books in the general way.

Q. As to these items you have just referred to from New York, you have no personal knowledge as to their correctness?

A. No, sir, I simply followed instructions.

Q. From whom did you receive instructions?

A. From Mr. Flagler, or from his office.

Q. Have you the letter in your files of 1887 in regard to the capital stock and bond account?

A. No, I know nothing about that beyond what I find on the books there. I have no personal knowledge of anything except I find that entry on the books.

Q. Could you say you received instructions from Mr. Flagler's office?

A. I was not with Mr. Flagler in 1887.

Q. Did you make this entry in the book?

A. I did not. I was not working for them in 1887.

Q. Who made the entry in the book?

A. I don't know.

Q. Who was in charge of the books at that time?

A. I didn't know, I was not with them.

Q. Are you in charge of the files or letters?

A. Yes, some of them.

Q. Do you have the files of 1887?

A. No, sir.

Q. Who has those?

A. I don't know. I was not with Mr. Flagler's road at that time.

Q. Yes, but you are now in charge of the files of the office, are you not?

A. I presume they would be there, I had no occasion to look for them.

Q. Wouldn't a letter of instructions to whom was in charge of accounts be in the office here?

A. It might be.

Q. Have you looked for it?

A. No, sir.

Q. Will you make a search to see whether you have that letter?

A. Well, I will look over. I think there is a very small chance of success. It is a long time ago. It is twenty-five years ago.

Q. Well, you will look to see whether you have it with you?

A. I will look.

Q. With reference to 1893 a purchase of the A. & W. Railroad, J-3 made 351, one hundred thousand dollars for twenty-eight miles of road, have you the letter of instructions with reference to that?

A. I may have.

Q. You looked for it?

A. No, sir.

Q. Will you look for it?

A. Yes, sir.

Q. The same with reference to the entry of December 31st, 1894, the account of the St. J. & H. Railroad, will you also look for the letter of instructions?

A. There was no letter of instructions about that. That comes from the books of that road. That was when that branch road was turned over to the main line as we called it. They were consolidated. Up to that time they were running separate roads and they were consolidated and the accounts were changed. The accounts of each were turned over to the main lines, we called the road.

Q. This item then, you did not receive from New York, but it is the property account of the road as it existed at the time of the consolidation?

A. Yes, sir, and the same applies to the St. J. & H. Railroad.

Q. The St. J. & H.?

A. Well, it is the St. A. & H.. Here is one and here is the other. One is the road from here to Palatka and the other is the road from Palatka to Daytona.

Q. That is true then, of the item to account of St.

A. & H. Railroad, and that item represents the total property account of that road at the time it was turned over and consolidated with the main line?

A. Yes, sir.

Thereupon at twelve o'clock and twenty minutes Court took an adjournment until two o'clock and forty-five minutes.

At two o'clock P. M. Court was convened pursuant to adjournment.

The witness W. H. Chambers was recalled for further cross-examination.

MR. NEEDHAM: Q. Mr. Chambers, you were asked by the accounting department of the Interstate Commerce Commission to furnish some additional data with reference to these items in the reports that you made?

A. Yes, sir.

Q. Afterwards it was furnished. Is that your letter?

A. That is the letter, yes, sir.

Q. You haven't the letter of the inquiry, I suppose?

A. No sir, not with me.

MR. NEEDHAM: I offer this letter to the Accounting Department bearing the date February 9th, 1912, as exhibit number one.

MR. ABRAMS: You propose to put in evidence on cross-examination?

MR. NEEDHAM: Yes.

MR. ABRAMS: Well then, it becomes your evidence and not mine.

MR. NEEDHAM: It becomes the evidence of the witness explaining certain items.

Q. Referring to this item of June 30th, 1903, which you say you entered in pursuance of a letter from New York, from Mr. Flagler or from his office.

A. The President of the road.
Q. Have you the letter?
A. I suppose I have.
Q. Will you produce it?
A. If I can lay my hands on it, yes.
Q. Were all those items included in the one letter?
A. No, I don't think so.
Q. They were separate?
A. Not as well as I can remember just now.
Q. They were in separate letters?
A. I think they were separate letters.
Q. Will you produce all of those, please?
A. I will if I can find them. I guess I have them.
Q. They have not been destroyed, have they?
A. No, they have not been destroyed.
Q. Then you have them?
A. I say they are there some place, I guess I can find them.
Q. Do you know of your own knowledge anything pertaining to these items other than that contained in the letter of instructions to you?
A. No, I can't say that I do, anything definite about them.
Q. Under what head in your accounts do you enter the charge of the cost of the road from Jacksonville to Miami?
A. Plant Account.
THE COURT: What account?
A. Plant Account.
Q. And from Miami to Homestead, what is the total of the amount?
A. That has all been charged into the main line.
Q. How was it originally?
A. It was first the Cutler Extension and when the line was completed to Homestead, it was then thrown to the Plant Account.
Q. How does that item appear in this account statement number one?
A. Cutler Extension to Homestead.

Q. What is the date?

A. The date is 1905, June 30th.

Q. Do you know that the total cost of the road from Miami to Homestead?

A. From Miami to Homestead?

THE COURT: That is about twenty-eight miles?

A. Twenty-eight miles, yes sir.

Q. And it cost four hundred and four thousand dollars?

MR. NEEDHAM: Yes, four hundred and four thousand, two hundred and fifty-nine dollars.

Q. Under what account do you keep the extension from Homestead to Knights Key?

A. Key West extension. It is drawn in the Plant Account from time to time.

Q. When did you make the first charge to Plant Account from the Key West extension account?

A. Now, here is the charge here, 1908.

Q. Just give the date and the amount?

A. June 30th, 1908, nine million, six hundred and fifty-four dollars, four hundred and eight dollars and one cent.

Q. Was that after the completion of the road to Knights Key and its opening for business?

A. I think so.

Q. And that represented the cost of the road at that time from Homestead to Knights Key?

A. Well, we were building beyond, of course, at the same time.

Q. And did it include items for work beyond Knights Key?

A. That includes all charges up to that time.

Q. Has the Plant account of the Main line been charged to the total amount up to November 30th for the extension?

A. You mean the last charge in there?

Q. You got all the charges that have been made to the Plant account giving the date from the Key West extension?

A. Well, here, the first charge is made June 30th,

nine million, six hundred and fifty-four thousand, four hundred and eight dollars and one cent, then there is a charge of June 30th, 1909, two million, nine hundred and four thousand, seven hundred and fifty-two dollars and twenty-seven cents, and then there is a charge of June 30th, 1910, of three million, nought fifty-five thousand, four hundred and seven dollars and sixty-seven cents, and then there was a further disbursement up to November 30th, 1911, of four million, seven hundred and sixty-four thousand, seven hundred and fifty-five dollars and seventy-nine cents. That made a total to the Key West extension up to June 30th, 1911, of $15,614,607.95.

Q. How much has since been charged to the Plant account for the Key West extension?

A. Since June 30th up to November 30th, $4,764,755.07.

Q. Well, now, since that date, has there been any charge made from the Key West extension on the Plant Account?

A. No, sir.

Q. What is the balance of that extension account today?

A. I don't know.

Q. The Key West extension put down as $15,614,607.95 does not include the four million, seven hundred and sixty-four thousand?

A. No, sir.

Q. What would that amount to, add the two items?

A. That would make $20,379,363.74.

Q. Can you state how much has been charged to the Key West extension since November 30th, 1911?

A. About a million dollars, I should say.

Q. When did they commence operating that line to Key West?

A. January 22nd, the first train was run in there.

Q. They have been operating it ever since?

A. Yes, sir.

Q. Regularly?

A. Yes, sir.

Q. Have they discontinued, has the road discontinued the running of boats to Knights Key?

A. Yes, sir.

Q. There are no boats now of course from Key West, you haul that entirely over the rails, that traffic?

A. The boats run from Key West to Havana?

Q. Yes, but I mean from Key West this way. You haul the entire traffic over the rail?

A. Over the rail. We abandoned Knights Key entirely.

Q. The boats from Cuba connect with the line at Key West now?

A. Yes, sir.

Q. And have since when?

A. January 22nd.

Q. When did they discontinue the running of the boats from Key West to Cuba and Miami?

A. I don't remember the date. Since we opened up at Knights Key.

Q. You opened up at Knights Key?

A. Uh-huh.

Q. Could you give us that date?

A. I cannot.

Q. Do you know what year it was?

A. No, sir.

Q. Will you refer to your books and give us that date, Mr. Chambers?

A. Mr. Martin could give you that.

Q. I would like to have it furnished and get it in some place here. After the discontinuing of the boats from Key West and Cuba to Miami, all the traffic that came by boat came over the rail from Knights Key, until the opening of the road to Key West.

A. Yes.

Q. And now that traffic goes over the rail from Key West?

A. Key West.

Q. Your statement here shows the cost of the main line with branches from Jacksonville to Homestead to be thirteen million, six hundred and seventeen thousand, six hundred and fifty-four dollars and twenty-eight cents?

A. Uh-huh.

Q. On November 30th?

A. June 30th.

Q. Doesn't this statement come up to November 30th?

A. Only in so far as this abstract here, the total here. You see this is made up of two or three.

Q. Will you give us the exact amount up to June 30th, 1911, of the Plant Account of the main line with its branches from Jacksonville to Miami?

A. Thirteen million, six hundred and seventeen thousand, six hundred and fifty-four dollars and twenty-eight cents.

Q. That represents as I understand it the exact cost of that line as shown by your books and as exhibited in this statement?

A. Yes, sir.

MR. ABRAMS: That doesn't include the equipment though, does it?

A. Oh, no sir.

MR. NEEDHAM: I did not say equipment, that is a separate. This is the Plant account.

Q. That includes then the item under date of June 30th, 1903?

A. Oh, yes, includes everything on this statement.

Q. Is there anything charged out on this Plant account of the old line for depreciation?

A. No.

Q. I call your attention now to the statement of equipment attached to this exhibit one under the head of "Debit." Are we to understand that this represents the cost of the equipment due as bought by the Company in each case?

A. Where the equipment was new, yes.

Q. This represents the payment for it as new?

A. Yes, sir.

Q. The credit item what, speaking generally, does that represent?

A. Well, that is the valuation of cars burned up, and cars sold, and cars mashed up, and locomotives or such matter.

Q. Does it represent in case of freight cars any depreciation item?

A. No, because all the cars destroyed represent the price of it.

Q. You credited then the entire cost of the car without any depreciation of it?

A. I think so.

Q. Are you sure that that is so?

A. I think so in most cases. I would not be positive in all cases.

Q. Who has the making up of those charges, you?

A. The Traffic Department notifies me when a car is destroyed.

Q. Who fixes the value when you credit to this account?

A. Well, we ascertain the value.

Q. Who ascertains the value?

A. It is ascertained in my department as to the cost of the car.

Q. How do you ascertain it?

A. Well, we know what the different cars cost us in every case without regard to the time the car has been used.

Q. Without regard to the service is has rendered?

A. Yes, it is supposed to be kept in good condition all the time.

Q. So this credit account so far as it represents the cars destroyed, represents their original cost?

A. The original value.

Q. That would not be true of the engines sold. that represents what?

A. Well, in some cases here it represents the selling price.

Q. Well, in all the cases, will you indicate that, please?

A. Well, I think here in this first case, I am not sure.

Q. Take the first item of March 31st, equipment sold and destroyed, four thousand, one hundred and seven dollars and eighty-seven cents, do you recall that item?

A. No, sir.

Q. You do not?

A. No, that is an engine.

Q. Equipment sold May, 1889, June 9th, Ledger one, page four, can you tell us what that represents?

A. I think that was an old narrowgauge equipment that was sold.

Q. And that represents?

A. What we got for it.

Q. What it was sold for?

A. Yes, sir.

Q. Regardless of what it had been charged into the Property account for?

A. Well, both of that came with the road in 1887, that entry of five hundred thousand dollars.

Q. That included the Plant and equipment?

A. Yes, there was no Plant thrown in at all with that purchase.

Q. And the purchase included the equipment that was on the road?

A. Yes, it included everything that was there. And there was no separation of the Plant and the equipment.

Q. When you changed the gauge you changed the equipment?

A. Naturally, yes.

Q. And this represents the selling price? Take the item of June 30th, 1889, five thousand one hundred dollars, what does that represent?

A. I don't know.

Q. What road was that sold to?

A. That is evidently sold to the Daytona road, St. J. & H.

Q. A part of this Plant?

A. Yes.

Q. Then it was sold from the Florida East Coast to its own branch?

A. Yes, probably an engine sent there to run on that road and charged up because they had not been consolidated at that time.

Q. This was before the consolidation?

A. Yes, sir.

THE COURT: Q. Let me understand about this depreciation account. Haven't you got a system by which you enter upon your books a certain percentage of depreciation as to the value of that equipment?

A. No, sir. The equipment is supposed to be kept up to a standard all the time.

Q. How can that be for a railroad company? Of course, the depreciation is charged in operating expenses.

A. Depreciation of equipment.

Q. It is?

A. Yes, sir.

Q. On what basis do you make that charge?

A. Two per cent usually.

MR. ABRAMS: I will explain that.

MR. NEEDHAM: That does not appear in this account.

THE WITNESS: Oh no, that is operating expenses.

Q. This account simply shows the cost of the equipment and the amount charged out by reason of their sale or total destruction.

MR. ABRAMS: That is all. I will state that this witness is not a witness to trust on the question of depreciation and the values. We will have the witness later for that.

MR. NEEDHAM: Q. Under October 31st, 1908, there is a credit by sleeping and follow cars sold, two hundred and fifty thousand dollars; won't you explain that item, please?

A. Well, up to that time we ran our own parlor and sleeping cars, and we sold the whole outfit to the Pullman Company.

Q. And contracted for the Pullman service?

A. For a Pullman service, yes. And they paid us two hundred and fifty thousand dollars for it.

Q. On what basis was that sum arrived at?

A. Well, now you have got to ask somebody else, I did not make the deal.

Q. You know nothing about it personally?

A. Nothing about it.

Q. You don't know what original relation they bore to the original cost of the sleeping cars sold?

A. You can see underneath thereby Loss on sale on sleeping cars. They cost us two hundred and ninety-three thousand dollars. You will find that underneath there.

Q. That explains the transaction which you said you couldn't explain?

A. No sir, that is another transaction.

Q. What is April 1st, 1909, item?

A. I think that is depreciation charged on the operating expenses and on those cars prior to the sale which reduced the values.

Q. It doesn't say that.

A. No, it doesn't say that, but it is the credit of equipment all the same.

Q. It is a credit as I understand it, but what reason have you to think that that item was it?

A. Twenty thousand, two hundred and ninety-seven dollars appear in operating expenses for that year. Well, it would be what had accrued that year. I would take it what they charged each year for depreciation for each month.

Q. Well, is there any way of confirming that?

A. No, not that I know of.

Q. Under September 30th, 1910, were locomotives sold twenty-two thousand, nine hundred and fifty dollars, can you explain that item more fully?

A. I think those were locomotives sold to the Key West extension. They are down there charged to the extension equipment account credited.

Q. In what account do they appear now?

A. They appear in the Key West extension equipment account charged to the Key West extension.

Q. Is that a part of the twenty million dollars?

A. Yes, that is a part of the cost of that extension.

Q. Have you the item of the amount of the equipment charged to the Key West extension account?

A. No, I have not.

Q. Can you give us that amount?

A. Yes, I can give it to you, I think I have the figures on that now.

Q. I would like to separate if you can, the plant from the equipment, the Key West extension. I think perhaps that appears in this statement on the second page of the exhibit.

THE COURT: Charged to the equipment of the Key West extension?

MR. NEEDHAM: Yes sir, I think it is the last sheet of exhibit one. I call attention to it being there.

Q. There is one million, five hundred and sixty-five thousand, two hundred twenty-six dollars and eighteen cents charged as work and floating equipment, does that include all the equipment charged to the Key West extension up to that time?

A. Yes, sir.

Q. What is meant by that word, "Work and floating"?

A. Those locomotives would be working equipment, floating equipment would be dredging, mixers, pile drivers and everything necessary for the work.

Q. For the purpose of constructing as well as for the extension, operating?

A. No.

Q. Purely for construction?

A. Purely for construction, yes.

Q. Have you any charge to that Key West extension for equipment used in operation?

A. No, sir.

Q. That is operated entirely then of the equipment charged to the main line?

A. Yes, sir.

Q. I call your attention now to the last item on the last page of this exhibit one, entries and commissions, one million, six hundred and thirty-one thousand, nine hundred and thirty-five dollars and twenty-seven cents, have you the items which make up that charge?

A. Yes.

Q. Can you state what they are?

A. No sir, there are many items there.

Q. On many items there?

A. Yes, sir.

THE COURT: What is the principal?

A. Interest on money borrowed to build the road.

MR. NEEDHAM: Q. Can you state how much of that is interest and how much of it is commission?

A. It is practically all interest.

Q. Well, practically, can you state the amount?

A. No, I can't state it because I don't know, but I can say it is almost all interest. I don't know what the commissions are in fact, I can't recall what the commissions are just now.

Q. Does your books show?

A. I think they will, yes.

Q. That is an accumulation of all charges for interest and commission in the Key West extension up to that time from the time the account was opened?

A. Yes, sir.

Q. Will you give us in two items the interest and commissions, can you bring those for us tomorrow?

A. I guess I can, yes. I don't know about tomorrow, that goes back for five years you know. That goes back and vouchers for five years.

THE COURT: This item, one million, six hundred and thirty-one thousand dollars, that was for interest—

A. For money borrowed.

Q. Interest from the time of the beginning of the construction?

A. Yes, sir.

Q. How long ago was that?

A. The construction commenced in 1904, to 1910.

Q. How did they raise money to build it? By the sale of bonds?

A. No, they borrowed the money from Mr. Flagler.

Q. I wanted to understand generally what this item was, what the amount of commission was.

A. I don't know what the commissions are, most of it is interest. And that is the sum total of the whole amount of interest and commission.

MR. NEEDHAM: Q. You say this goes back to 1904, was the Key West extension account open in 1904?

A. Yes, July 1st, 1904.

Q. And this date from then to the present time?

A. Yes, the first item was for interest in 1906 according to this.

Q. Where is that item?

A. The second to the last on the first page.

Q. That is entered as interest and commission also?

A. Yes, that was just the title of the account.

Q. Is it not a fact that in that account there is a considerable item for discount on bonds?

A. Well, there were no bonds then—Yes, that is right.

Q. Well, is it a fact or not?

A. That is right, there is a discount on bonds they sold for 1895, wasn't it?

MR. ABRAMS: You mean the bonds sold to Morgan?

A. Yes, the discount on the bonds.

Q. Do you remember how much?

A. Yes, sold for ninety-five, I think it was ninety-five.

MR. ABRAMS: I don't recall. I drew up the mortgage, but I don't remember what they sold for.

THE WITNESS: I think it was ninety-five.

Q. And that discount appears in these items in this account?

A. Yes, I think it does, I think it is in that item of 1909.

Q. Are there any other items that you can recall now of commissions or discounts?

A. No, the commission for selling those bonds is entered too.

Q. How much was that?

A. I don't remember just now.

Q. You can give us that amount, can you?

A. Yes.

Q. You remember the rate of interest paid for the money that was used in the construction that goes into these two amounts?

A. No sir, the rate that that Company filed it for in New York charged us at the rate that the Company borrowed it, it varied from time to time.

Q. And you took those items from New York?

A. From New York, yes.

Q. Is there any interest upon bonds charged upon this account?

A. No, sir.

Q. Did it represent simply the current wants which were made before the bonds were floated?

A. Yes, sir.

Q. What steamship companies are operated by this road?

A. There are none.

Q. Have there been during the period covering this statement?

A. What statement?

Q. That you have furnished here, Exhibit one.

A. This Plant statement?

Q. Yes, sir.

A. Yes.

Q. What lines were operated by the company?

A. Well, we ran lines down the Indian River for some years.

Q. Between what points?

A. Well, between Eau Gallie and Duplicate, between Fort Myers and Duplicate.

Q. Was that operated by the railroad company? That line?

A. No, it was operated by the steamship company.

Q. How was the ownership in the railroad company?

A. They owned the boat.

Q. Are they charged into this account?

A. Yes, and they are charged out again.

Q. Well, are they charged in first, and then we will find out about the other.

A. I think so.

Q. Will you point out the items where they are charged into the account, is it in the Plant or the Equipment account?

A. Well, it would be in the Plant. Here is three steamboats, the St. Lucie, Sweeney, and the Courtley in the second page in 1897.

Q. That represents the cost of those boats? Were there any other boats owned by the company on that line?

A. I think not.

Q. At any other time?

A. I don't remember now, no sir. I don't know whether they had any more or not. They had had but I forget now what its name was.

Q. Can you tell by looking over the account?

A. Yes, sir. I can't recall now that it was that far back.

Q. Are there any other steamboats that appear in this account, this plant account?

A. I can't say right now.

Q. Well, do they in fact, appear in any item here?

A. I don't know until I look over it. I didn't expect to be examined along this line and I haven't got the information.

Q. Would you say that they did not appear in any other item belonging to this line?

A. There is another one, I didn't see that. That is the P. & O. Steamship Company.

Q. What steamship is that?

A. That is a line of several boats.

Q. How many boats do they have?

A. I am sure I don't know, I don't know how many they had.

MR. ABRAMS: That is all stricken out.

MR. NEEDHAM: Well, wait a minute and let's find out what is in. Q. Where do they appear in the plant account?

A. Well, they appear here some place. I thought they were thrown out, but I can find them. Yes, here it is, P. & O. Steamship Company.

Q. Where do they appear?

A. The third, June 30th, five hundred and fifty-six thousand, seven hundred and forty-seven dollars and thirty-six cents.

Q. Now, does that stock represent all of the outstanding stock of that company?

A. I don't know.

Q. Was that the ownership of the Steamboat?

A. That was our interest in them.

Q. You don't know whether that represents all the stock issued by the Company or not?

A. No, I don't think it did.

Q. Did the Railroad operate those boats directly or through the Steamship Company?

A. The P. & O. Steamship Company operated them.

Q. Are those still in operation?

A. It is as the P. & O. Steamship Company, it is.

Q. Where does it operate?

A. It operates from Havana to Key West, and Havana and Tampa and from Miami to Nassau.

Q. Now, you say that these were charged out of the account won't you tell us where they are charged out?

A. August 31st, 1907.

Q. Out of the Plant material?

A. Out of the Plant, yes sir.

Q. That includes the item of stock in the Steamship Company that operates between Key West and Havana, and between Miami and Nassau?

A. Yes, sir.

Q. Do they operate any other line?

A. Key West to Tampa.

Q. Where is the other line? The River Line?

A. There is a part of it, the St. Lucie. In 1903, June 30th, sold for thirteen thousand dollars.

Q. How much was it charged to Plant account for?

A. Well, the three of them were charged in together as I showed you before.

Q. As a single item?

A. Yes, sir, as a single item.

Q. Any other items where the Steamboats were charged to the Plant account?

MR. ABRAMS: What Steamboat are you referring to, the P. & O. Steamship Company?

MR. NEEDHAM: No, on the River. The Courtley sold in 1905, was that a river boat?

A. That was a river boat, yes.

Q. What was the amount?

A. Six hundred and fifty dollars.

Q. Where are the others?

A. Here in 1906, the Pistayne sold.

Q. At how much?

A. Six thousand five hundred and seventy-four dollars and eighty-one cents.

Q. Those were the three boats that were included in the first item in the Plant account?

A. I think so, yes.

Q. How much do they aggregate on the credit side of this account?

A. Well, I will have to add it up to see. Twenty thousand two hundred and eighty-four dollars and eighty-one cents.

Q. Were there any other lines of boats operated than those you have referred to?

A. No.

Q. What is the item of March 31st, 1892, being Ferry boat sold to J. M. & P. Railway Company?

A. The first page 1892?

Q. Yes, that is right.

A. Well, I guess it is sold of the old Ferry boat running from Jacksonville to South Jacksonville.

Q. Do you know?

A. I know those are the only Ferry boats ever had.

Q. Where do they appear charged into the account?

A. That account only appeared in this original item here.

Q. As a part of the original?

A. A part of that original Plant.

Q. Those were sold at the time the bridge was constructed?

A. About that time, yes.

Q. And as a result of the construction of the bridge?

A. We seemed to run the Ferry boat.

Q. In the year 1899, there are two items, one of June 30th Profit and Loss charged off, seven hundred eighty-nine thousand dollars and again Profit and Loss charged off, ninety-two thousand four hundred forty-four dollars, what are those items supposed to represent?

A. They are supposed to represent loss in operation up to that time.

Q. Loss in the general operation of the road up to that time?

A. Of the road, in other words it cost more—

Q. Do you mean by that the operating expenses after deducting the revenue?

A. Profit and expenses exclusive of the revenue of that amount.

Q. And that is charged into the cost of the Plant?

A. Yes, because it cost us that amount of money to bring the Plant up to a paying basis.

Q. Those items then do not represent the purchase of any property?

A. No, sir.

Q. Is that true of other items in this account charged from Profit and Loss?

A. Which items do you refer to?

Q. Well, if there are any other items, is that the explanation of them?

A. Yes sir, that is the explanation.

Q. I am not quite sure that there are any others, I just wanted to know, I haven't looked over, I simply wanted to know if there are any.

A. I think those are the only two.

Q. I am inclined to think they are the only two, but I wanted to be sure to cover everything if there was any others. I call your attention to the item of June 30th, 1900, this means improvement two hundred and thirty-two odd thousand dollars, what was that work?

A. Well, I think it is where they were putting wharves and docks down there, but I am not familiar with the situation.

Q. Down where?

A. Down in Miami.

Q. That was for the purpose of connection between the Railroad and the boat?

A. And the boat, yes. A Steamship connection there.

Q. Was the boats running from Key West and Cuba?

A. Nassau and Havana.

Q. The operation of the dredges, does that apply to that work?

A. That would, yes.

Q. That is true to these several charges to Biscayne Bay improvement, or similar items?

A. That is all in the same line.

Q. And for the same purpose?

A. For the same purpose.

Q. What is the Mayport Terminal Company?

A. Well, the Mayport Terminal is just our coal dock down there.

Q. Down where?
A. At Mayport.
Q. That is the Termini of that road from Jacksonville to Mayport which is on the sea?
A. On the St. Johns River.
Q. To connect with the Steamers?
A. Yes sir, coasting Steamers, and sailing ships mostly.
Q. That is a separate corporation, is it?
A. No, it is not a separate corporation. What are you referring to?
Q. Referring to the item June 30th, 1903, Mayport Terminal Company dock, twenty-three thousand two hundred and five. I was not going to ask about that you said you don't know about those items.
A. No, that Mayport stock I don't know about that.
Q. That indicates that the Mayport Terminal Company is a separate organization?
A. Well, it was at that time for a time, but we have been operating it ever since.
Q. Ever since what time have you been operating it?
A. Well, shortly after we got it, I don't remember the date, probably about February, 1903, or '04.
Q. Does that represent the cost of it at the time you bought it?
A. I don't know. I don't know what that stock represents at all.
Q. But since that time you have been operating it as a part of the Plant of the Railroad?
A. Yes.
Q. And not as a separate organization?
A. No, as a part of the Plant of the Railroad Company.
Q. In your letter of February 5th, 1912, Exhibit No. 2, you have stated all that appears upon your books and all that you know personally regarding these items charged upon directions from New York office, have you?

A. Let me see that please. Uh-huh, that is as far as I know about that.

Q. In exhibit No. 11, you have stated the equipment, November 30th, 1911, arrived at in the manner you stated upon Direct Examination, have you any statement of the equipment as it appeared in 1907 from these same sources?

A. I don't think so, I don't remember having it.

Q. Would your account from which this statement is taken November 30th, 1911, showing the equipment on hand in 1907?

A. Yes, we know what we had then.

Q. That would appear in the same account?

A. I got it from the same source that I got that.

Q. And from that you could ascertain the same fact that are contained here?

A. Yes, sir.

Q. Will you give us a statement of the equipment, please?

MR. ABRAMS: You will find it under the sworn report of the Company under June 30th, 1907. A statement of everything, that is the road, locomotives and so on. I filed that with the Commission report in 1907. I filed 1907 and 1908, it is all in print. I took it and filed it before the Interstate Commerce Commission and the State Railroad Commission.

MR. NEEDHAM: I will withdraw that request if it appears in the account, it is not necessary to make it again.

MR. ABRAMS: You will find it in the annual report.

Q. In exhibit number three you have given the amount of material on hand, December 31st, 1911, have you a statement of the material on hand which were given to Col. Elliott for valuation?

A. I don't remember what we gave Col. Elliott, I don't remember whether I gave him that or not. I don't remember giving Col. Elliott anything.

Q. Well, have you a statement that would show the amount of material on hand at that time?

A. I have got my Ledger showing my ledger balance on that date.

Q. Would it show the items as given there?

A. As shown there.

Q. As this is made up?

A. Yes, sir.

Q. Won't you give us that statement, just before 1907, the date when Col. Elliott made his estimate of material on hand?

THE WITNESS: Haven't you got that, Major?

MR. ABRAMS: It is in Elliott's report that came over here. You have got that in evidence, I will show it to you, it is there.

MR. NEEDHAM: Well, if it is there you need not furnish it.

MR. ABRAMS: It is there amounting to seven hundred and thirty-five thousand dollars.

Q. I call your attention now to Exhibit four showing a statement of freight and passenger business accruing to the main line from the operation of the branch lines, and ask you whether or not that includes the account of passenger traffic, and the carrying of your own men?

A. What do you mean by—

Q. Non-paying passengers.

A. We haven't got any non-paying passengers.

Q. Does it include that?

A. We have not got any non-paying passengers that I know of.

Q. Speaking of employees that travel on passes, they are non-revenue paid, are they not?

A. No.

Q. Is there a charge made up for those passengers?

A. No, sir.

Q. You are sure that there is no charge made here for the Key West extension for the carrying of laborers?

A. No, they pay their way. We charge the Key West extension for every man we carry for them.

Q. For your own laborers?

A. Yes sir, for our own laborers.

Q. This amount then represents the carrying of these men as passengers?

A. Well, I don't think you will find any of them traveling from the branch lines.

Q. I am speaking of the Key West Extension?

A. What was that question?

Q. Does the revenue as passenger service as you have given it heretofore include charges for the carrying of men who are in the employ of the Railroad Company?

A. I don't think so. Let me see that a minute and I will tell you. It gives it here as a separate item.

Q. Well then, it does give it, does it?

A. It does give it on account of the Company's business on a separate item.

Q. Does that include the passengers and freight?

A. Where it says freight it means freight and where it says passengers it means passengers. They are both there.

Q. And that income here was represented on that exhibit as simply a book charge?

A. It is a book charge.

Q. For carrying your own freight and your own men?

A. Yes, we charge them three-quarters of a cent a mile and six mills per ton for freight.

Q. But it does not represent any revenue to the Company other than represented in the charge for services?

A. Charged against the Key West extension and credited to the main line.

Q. What do you mean by credited to the earnings of the Main line?

A. It is the increase.

Q. Where does that appear?

A. It appears in the page here (indicating) on the freight earnings.

Q. You mean in the general statement of freight and passenger earnings?

A. Yes.

Q. That item is included?

A. Yes, that is. included.

Q. The freight of course includes material that you carry for constructions?

A. Oh yes, certainly that is what it is.

Q. How was the freight charged up, in reference to the class of material?

A. We charge them six mills per ton per mile.

Q. Regardless of the tariff on such freight as charged a regular shipper?

A. Yes sir, that is what we figure as cost.

Cross-examination.

MR. ESTERLINE: Q. Mr. Chambers, I call your attention to Exhibit numbers seven and eight, if you have them there take Exhibit number eight first, is the statement showing wages paid and the number of employees in the year 1907. Giving the number of employees as one thousand five hundred and forty-two, and the amount paid as nine hundred and seventy-nine thousand nought twenty-five dollars and fifty-one cents, for the year 1907, for the year 1911, the number of employees is given as two thousand seven hundred and forty-two and the total pay roll as one million three hundred and forty-five thousand five hundred and two dollars and thirty-nine cents. That shows in the year 1911, twelve hundred additional employes over the year 1907, does it not?

A. Yes.

Q. And it shows an increase in the pay roll of six hundred and sixty-six thousand, four hundred and seventy-seven dollars and eighty-eight cents, assuming that this is the correct compensation, that is showing the difference between nine hundred and seventy-seven thousand and twenty-five hundred dollars and fifty-one cents, and one million three

hundred and forty-five thousand, five hundred and two dollars.

A. What did you say the difference is?

Q. Six hundred and sixty-six thousand, four hundred and seventy-seven dollars and eighty-eight cents.

A. I wouldn't make it that much.

MR. ABRAMS: It is only a little over four hundred thousand dollars.

Q. I see, it would be three hundrd and sixty-six thousand, four hundred and seventy-eight dollars and eighty-eight cents.

A. Yes, uh-huh.

Q. An additional increase in the pay roll, with an additional increase of twelve hundred employes.

A. Yes, sir.

Q. That increase in the pay roll would be divided as on the increase on the wages of the old employees as well as the wages of the new, would it not?

MR. ABRAMS: We object to that question, because it depends when that increase took place. It may have taken place at the last of the year.

A. It was possibly divided between the wages of the twelve hundred employees and the increase, if any, on the wages of the old employees.

MR. ABRAMS: I say that the witness could not know.

MR. ESTERLINE: I am asking the witness if he does.

A. I couldn't tell you anything about that, unless I could analyze it.

Q. Have you any knowledge as to how the increase of—Three hundred and sixty-six thousand four hundred and seventy-seven dollars and eighty-eight cents would be divided?

A. No, sir. Not the slightest.

Q. Well, your figures do show that increase in the pay roll, that twelve hundred additional employees. That charge is correct?

A. Yes, sir.

Q. Now then, you do not regard that Mr. Chambers as a very large increase in the pay roll, with twelve hundred additional employees?

A. I couldn't tell you anything at all about that discrepancy in their pay roll, what class of labor that includes whether they were mechanics or track hands or what.

Q. The reason I asked you was, I understood you to say that there had been a large increase, that wages had gone up.

A. Oh yes, that would be only in a general way.

Q. Well, I am only going over it in a general way.

THE COURT: Of course, your question calls for the opinion as to the actual operation of the road, which he does not assume for a minute to be familiar. It is not an accounting matter. It goes from the substance of the matter itself.

Q. May I ask on what you base your knowledge in answer to Major Abrams' question that there has been a large increase in labor?

A. Well, I notice it here.

Q. Well, do you base it on these figures alone?

A. Well, I know in a general way and it is well known.

Q. Well, it is just a matter of general knowledge that you know, independent with your connection with the Railroad Company.

A. Yes, I know that they have been paid from time to time, but to what extent I don't know.

Q. I thought you assumed to know from your connection with the Company.

A. No, sir.

Q. You don't pretend then to give us the knowledge of your own?

A. Simply that they have gone up in a general way.

Q. Now, Mr. Chambers, I notice the names of various classes of employees paid in the year 1911, trackmen, conductors, trainmen, machinists, shopmen, engineers and firemen. You did not include station

men, telegraph operators, why did you omit such classes of employees as those?

MR. ABRAMS: What class?

Q. Station men, station agents.

A. I guess I was not asked for that information.

Q. You were asked to prepare the statements, were you?

A. Yes.

Q. And you were asked to give these—You have no knowledge as to how, or in what as to those employees, did not include those in the statement?

A. They might just as well have been included. No reason why they should not have been.

Q. Any other class that was not included that you can recall?

A. Well, the clerks. We don't call the clerks laborers, and we don't call the station agents laborers, and I presume that is why they are not in here.

MR. ABRAMS: I think the clerical increase took place last year.

Q. Does it include the laborers on the Key West extension?

A. No, it has got nothing to do with them.

Q. Did you say you did not put in the station agents or clerks, only the laborers?

A. I say I presume that was what was asked of me.

Q. What was the station agent salaries, that is to say in a general way, of course you paid them different salaries?

A. Oh, it run from fifty dollars to a hundred and fifty dollars. The engineers draw from a hundred and ten to a hundred and fifty to two hundred and fifty dollars when they get extra time.

Q. Your statement here shows the engineers?

MR. ABRAMS: What is it for 1911?

Q. Your statement here shows conductors from a hundred and ten to a hundred and fifty dollars?

A. Yes.

Q. There is not much difference then in the sal-

aries paid to the conductors and engineers and station men, is there?

A. Well, engineers sometimes make three hundred dollars a month.

Q. I mean as a general rule?

A. Oh yes, engineers make more than conductors right along.

Q. Then you do include the engineers who make more money and do not include the station men who make less?

A. The station men, as I say, we don't call them laborers, and they probably asked for the wages paid the laborers and mechanics. There is no reason why the station agent should not be in there. They got an increase the same as the others.

Q. Mr. Chambers, is it not true that in the year 1907 the average pay was higher than the pay for the year 1911?

A. I don't know.

Q. Are you sure of that?

A. No, I am not sure of it, I don't know anything about it.

Q. Now, coming to the statement on exhibit number four referring to the statement of freight and passenger business as accruing to the main line from the operation of branch lines and the Key West Extension for the year ending June 30th, 1910 and 1911, based on actual mileage on main line, by each ton of freight and each passenger going to or coming from or passing over the branch lines, and referring also to exhibit seven, freight and passenger earnings over Key West extension from Miami south, for eight months ending February 28th, 1911, and February 29th, 1912, now, Mr. Chambers, the Key West extension was opened January 22nd, 1912?

A. Into Key West.

Q. Into Key West January 22nd, 1912. This case was submitted to the Interstate Commerce Commission May 25th, 1911.

MR. ABRAMS: Oh, no, this case was begun in December, 1911.

Q. I am talking about the report of the foundation, it shows that the case was submitted May 25th, 1911.

MR. ABRAMS: Oh, you don't mean this case then?

Q. Oh no, this case came along after the Commission was closed.

Q. May 25th, 1911, is what the report shows.

A. I will take your word for that, I don't know anything about it.

Q. Very well, you may safely do so because I have the record here before me. At the time of the hearing before the Commission was closed, the Key West extension was not in position for operation.

MR. ABRAMS: Oh, that is a mere matter of argument that is apparent.

MR. ESTERLINE: Oh, well, I am asking him the question.

Q. That is true, is it not?

A. Yes, sir.

Q. Now then, it was completed up to Knights Key at that time?

A. May, 1911?

Q. Yes, sir.

A. Yes, it was completed to Knights Key.

Q. Now, up to that time and previous to that time, the freight was delivered to you by the Steamboat Company at Miami and Knights Key, was it not?

A. Yes, sir.

Q. It is still delivered to you at these points, Miami and Knights Key?

A. No, Knights Key we have abandoned.

Q. And you have moved and the Steamship Company has moved the dock facilities from Knights Key to Key West?

A. I guess so.

Q. So, that the only difference in the handling of that freight has been the moving of the dock from Knights Key to Key West and instead of delivering the freight to the Company at Knights Key, it is delivered at Key West?

A. Yes, that is it.

Q. Has there been any change from Miami to Key West?

A. No there has been no change.

Q. The business delivered at Miami?

A. Only the boat that comes to Miami.

Q. That still runs as before?

A. It don't get any freight by that.

MR. BOGGS: It used to be delivered at Miami several years ago?

A. Oh yes, some years ago it used to be delivered.

Q. Prior to the time of the operation at Knights Key it was delivered there?

A. Yes.

Q. So when you constructed the Knights Key you moved from Miami down and when you constructed at Key West, you moved from Knights Key to Key West and that has been the only change so far as the handling of the business is concerned?

A. That is all.

Q. Now, have you any record showing the volume of business delivered by the Steamship Company commencing at the time you delivered at Miami and moved to Knights Key and then moved to Key West, have you any statement of those?

A. No, sir.

Q. The Railroad Company works in connection with the Steamship Company, does it not? In the handling of that business?

A. It connects with it.

Q. And the Steamboat Company with the Railroad Company. Do you know whether the Steamship Company has any record of those deliveries and the volume of them?

A. Sure they have.

Q. They have?

A. Yes.

Q. Have you access to those records?

A. No.

Q. Do I understand you, Mr. Chambers, that the railroad company has no records showing—

A. You didn't ask me if I had any records.

Q. Well, I will ask you now, has the railroad company any records showing the volume of business delivered at Knights Key?

A. Certainly, sir.

Q. Prior to the time they moved the dock to Key West?

A. Certainly.

Q. And have they records showing the volume of business delivered the railroad Company at Miami prior to the time they moved to Knights Key?

A. Yes.

Q. Now, can you show by statement what that volume of business was?

A. Not without working it up at a great deal of time and labor.

Q. And you of course, have records of the volume of business delivered this last month?

A. I have records of all our business.

Q. Mr. Chambers, do you know what traffic comes over the boat from Cuba that came to Miami that was then delivered to Knights Key and now to Key West, what it consists of?

A. We have had pineapples and small shipments of fruit and tobacco, we don't get very much that way.

THE COURT: I was going to ask that very question, what would be approximately the proportion of freight received from Cuba which was received from the south?

A. You better get that from our Traffic Department because they are keeping in touch with all that.

Q. Is it considerable?

A. Mr. Kirkland there can give you more information than anybody else on that.

MR. ESTERLINE: Q. Now, Mr. Chambers, just one or two more questions, referring to exhibit four statement of freight and passenger business and its com-

panion exhibit referred to estimating freight and passenger earnings, you know the exhibit to which I refer?

A. Yes.

Q. Where do you get those totals from?

A. Well, from the train earnings and the freight from the bills.

Q. Now, who made those up?

A. They are made up in my department.

Q. Have you got the tabulation of figures from which you took those totals?

A. No, I haven't, I guess they are in the office.

Q. Can you produce those for our examination?

A. Yes, I think so.

Q. You are going to be in the city for the next two or three days, and if you will produce those they may save us further cross-examination. We want the tabulation to show, I assume you have these readily at hand.

A. I don't know whether they have kept them or not. They were just simply figures, you know.

Q. Will you bring them if you can find them, please?

A. Yes, sir.

(That's all.)

Cross-examination.

MR. BOGGS: Q. Mr. Chambers, in your exhibit not numbered here, covering the estimated freight from Key West extension you cover a period of eight months ending February 28th, 1911, and February 29th, 1912. Why did you select the period of eight months?

A. You will have to ask Major Abrams that. He asked for the figures.

Q. Well, is it not a fact, Mr. Chambers, that the four months that you did not cover in this statement for these two years are the months when the average

stock of the Homestead section is moving in its heaviest movement?

A. Oh, that is as far as we have gone on the fiscal year. I didn't go any further than the fiscal year.

Q. But you would have gone back and made it twelve months ahead?

MR. ABRAMS: That is for the fiscal year.

Q. Well, as a matter of fact, however, the matter of selecting the figures this way—

MR. ABRAMS: I object, he has already stated what he was instructed to do. I requested him to give me the figures up to February 28th.

Q. The effect of selecting these eight months and the leaving out of the four months would make the heaviest show for the Homestead extension from Miami to Homestead, isn't that so?

A. Yes, I guess most of the vegetables come in after that time.

Cross-examination.

MR. HUDSON: Q. Mr. Chambers, is it a part of your duties as Comptroller to pass upon and verify and send reports to the State Railroad Commission, is it not?

A. Yes, sir.

Q. I hand you a report of the Florida East Coast Railroad to the State Railroad Commission for the year 1907, you signed that report, did you not?

A. Yes.

Q. I will ask you to state what was the amount of betterment to your road shown by that report in 1907?

A. One hundred and sixty-seven thousand nought sixty-three dollars and forty-nine cents, it says here.

Q. That report is correct, is it not?

A. Yes, sir, I presume it is.

Q. I now hand you report for 1908, you signed that report, did you not?

A. Yes, sir.

Q. State what the betterments are shown by that report for the year 1908.

A. Eighty-four thousand six hundred and thirty-eight dollars and eighty-seven cents.

Q. I hand you report for the year 1909, you signed that report, did you not?

A. I did.

Q. State what were the betterments shown for that year by the report to the State Railroad Commission.

A. Well, that is two million, nought forty-five thousand, one hundred and fifty-seven dollars and seventy-nine cents, and two hundred and seventy-four thousand, nine hundred and seventy-five dollars and seven cents.

Q. You have given two items, Mr. Chambers, explain what each of those items represent.

A. Well, the first is charged to capital, the second is charged to special funds on income.

Q. Does the item of two million dollars and over, is charged to capital?

A. Yes.

Q. That represents the Key West extension, does it not?

A. Some of it, I guess.

Q. Well, does it represent all of it?

A. Not all of it. Upon work since then.

Q. I mean all for that year?

A. All that was charged to it up to that time.

Q. I now hand you report for 1910—

MR. ABRAMS: We insist that that is his signature.

Q. State what betterments are shown by that report for the year 1910.

A. Well, expenditure for new line of extensions, two million, nine hundred and forty-eight thousand, six hundred and thirty-one dollars and three cents, and expenditures for addition and betterments, two hundred and thirty-seven thousand, two nought nine dollars and seventy-four cents.

Q. All those reports are made the first of June of each year for the end of that fiscal year?

A. Yes.

Q. And those are correct reports of the Company's affairs?

A. Yes, sir.

Re-cross-examination.

MR. NEEDHAM: Q. Which are the poorest months on your line for revenue?

A. I guess September and October.

Q. Would not that be true of July and August?

A. No, July sometimes we have got some fruit moving in July, pineapples and that sort of things.

Q. But July and August, September and October would be the four lightest months?

A. Yes sir, the lightest months.

Q. Of your traffic?

A. Yes.

Q. Will you take the comparative statement operating revenues for July and October inclusive, for the fiscal years 1909, 1910, 1911 and 1912, which I now hand you and compare them with your account, your books and tell us whether that is correct as showing the volume of business for those four months for the years named?

A. I can't give you anything for July or October, 1912.

Q. No, compare simply the figures that are upon that exhibit and see whether or not they are correct.

A. What are these fiscal years?

Q. That simply gives a part of that year.

A. It gives July to October, 1912, I don't understand that.

Q. Fiscal year means the end of 1912, of course it only covers these four months which are not in 1912, but are in 1911.

A. Oh, I see what you mean, the fiscal year, ends

June 30th and the fourth months included are the four months in 1911. Well, you want me to compare this with my book and see whether that is correct?

MR. ABRAMS: Let me see that, will you, Mr. Chambers?

Re-direct examination.

MR. ABRAMS: Q. Mr. Chambers, how long did I understand you to say you had been with this railroad company, now the East Coast?

A. Since 1888, Mr. Flagler's road, from 1887 with the St. Augustine & Palatka road.

Q. Now, after Mr. Flagler acquired the road, the three first roads, was it not operated to Daytona for some time as a terminal?

A. Yes.

Q. How long?

A. Well, my recollection is about '89 or '90, about 1889 or 1890, we commenced building south of Daytona.

Q. Now then, what was that extension known as when you commenced to work from Daytona?

A. It was the Florida Coast & Gulf at one time.

Q. Didn't it have some local name?

A. I don't know, it had two or three names. Jacksonville, St. Augustine and Indian River Railroad.

Q. Wasn't it known as the Titusville extension?

A. The building from Daytona to Titusville, no, I don't remember any such name.

Q. Now, when you came to a stop in your construction and so much of it was built and turned over to the company, that terminated that extension account for the time being?

A. Yes, at that point wherever it might have been.

Q. And when you resumed your work your accounts were kept from the last terminal?

A. Yes, we started several stretches in that way.

Q. When you got to Palm Beach, you stayed there some time before you resumed your work?

A. Yes.

Q. Well, when you resumed work, didn't you start a fresh account?

A. Yes, I think so.

Q. Wasn't that known then as the Miami Extension?

A. I don't remember what we called it.

Q. I see it in your account as the Miami extension.

A. Probably it was.

Q. Then you began afresh when you got to Palm Beach and stopped there for a while and it was turned over to the company, the general operating company, then when you began again you opened a new set of accounts, did you not?

A. Yes sir, we called it the Cutler extension.

Q. Then how long did you stop at Miami?

A. I don't remember, quite a little while.

Q. Then, when you began to extend south, you began keeping a set of accounts to Homestead?

A. Yes, we called it the Cutler extension.

Q. Then you stopped for some time at Homestead, did you not?

A. Yes, sir.

Q. Do you know why or were you advised by the company why they stopped work at Homestead?

MR. NEEDHAM: One moment, we object to that question.

MR. ABRAMS: I want to see, if the Court please, the fact—

THE COURT: Ask him as an accountant whether he was advised.

MR. ABRAMS: Whether he knows why they stopped at Homestead.

A. I knew we were surveying for a road to Key West at the time and I assumed a stop there until they finally decided a route they would take.

Q. As the road extended south from Indian River wherever it stopped for the time being, it connected with steamboats of the Indian River Company, did it not?

A. Yes, and various points on the Indian River.

Q. Prior to that time before the East Coast was built that connection was made at Titusville across the St. Johns River?

A. Yes, that was the only connection they had.

Q. Now then, did the Florida East Coast Railroad Company operate itself all the boats connected at various times on the river with it?

MR. ESTERLINE: Your Honor, I want to enter an objection to this, as it is not proper re-direct.

MR. ABRAMS: Oh, yes, it is a direct question.

THE COURT: Oh, that is all discussed, let him answer the question.

Q. Answer the question.

A. We operated boats down there, but whether all the boats there were, other boats besides ours, I presume on the river.

Q. Standing at your dock delivering freight and passengers and receiving them?

A. Yes.

Q. Do you know if you chartered any boats at any time on the Indian River?

A. I believe we did. I know the River Steamboat Company carried a good lot of our material down there.

Q. That was a separate corporation?

A. Oh yes, entirely.

Q. You had no interest in that, the East Coast hadn't?

A. No, sir.

Q. Referring to your answer to the question of 1897, June 30th, steamboat St. Lucie and Courtley, now I understand from your answer these boats were purchased to operate from Titusville and Palm Beach while the road there was in construction from Titusville to Palm Beach?

A. Yes, they ran during that period.

Q. Now, when you stopped for a while at Palm Beach you ran a line of boats to Nassau, didn't you? From Palm Beach on the ocean?

A. I think we did for a short while.

Q. Now, I have an item here which I would like for you to explain, which is this. Item for June 30th, 1903, is that your opinion of the meaning of that item, Mr. Chambers?

A. Yes, that is as I understand it, without possibly knowing anything about it. That is what I understood it.

Q. This item "Net earnings put in plant, five hundred and eighty." The next item is just the same your understanding of it?

A. Yes, that is all without knowing anything positive about it.

Q. Now, I take up another item, June 30th, 1902—I suppose that is that eighty-eight odd thousand item.

MR. NEEDHAM: What is that?

MR. ABRAMS: Property purchased from H. M. Flagler June 30th, 1902.

Q. Mr. Chambers, do you know what it was that Mr. Flagler charged for that?

A. I think it says on the statement there.

Q. Here it is. Eighty-eight thousand, hundred and fourteen dollars and fifty-seven cents, property purchased.

A. Well, that is all land here in St. Augustine. Where we got our station and railroad yard.

Q. Now, do you know what the condition of those marsh lands were when the company bought them?

A. Some of them were filled and some was not.

Q. Wasn't a great part of it filled by Mr. Flagler?

A. Oh yes, it had been filled by Mr. Flagler, some of it was filled, and some of it was not filled.

Q. But didn't Mr. Flagler fill it?

A. Oh yes, certainly.

Q. Do you know whether that item of sixty-eight thousand dollars represented anything more than he has paid out for the fixing of that marsh land?

A. No, I do not.

Q. Now, I take this other item, June 30th, "Loss

on sale of bonds," three million dollars, had not there been a previous issue of bonds?

A. Yes, there had.

Q. Taken by Mr. Flagler at par, were they not?

A. Yes.

Q. At three and one-half per cent interest?

A. Yes, they brought three and one-half per cent interest.

Q. And that is merely an increase up to five?

A. Four up to five.

Q. The maximum being five?

A. Five.

Q. Do you know what understanding and arrangement was made between Mr. Flagler and the company, when that seven million, five hundred thousand dollars—

A. Seven million, two hundred and fifty thousand.

Q. Of bonds were charged up against him at par?

A. Well, I have heard.

MR. NEEDHAM: Well now, I object to that.

Q. You don't know?

A. I don't know. That is simply a matter of my understanding of the matter in that letter.

MR. NEEDHAM: The statement was made that those were made in pursuance of directions received from New York.

THE WITNESS: Yes.

MR. NEEDHAM: Now, what we want is the directions, not what you understand or what his opinion is.

THE WITNESS: Mr. Price can give you that.

MR. NEEDHAM: We want the letter which speaks for itself.

THE COURT: Well now, let's get at it, what is it?

Q. Propounded by Counsel to the witness. You say in this letter of June 30th, bond was sold for three million dollars, and that as the property had rapidly increased the value was considered fair, now was that your instructions or in the letter of instructions that Mr. Flagler instructed you to—

MR. NEEDHAM: Now, wait a minute, I object to that question. My objection is that he cannot state orally as to what that instruction was, it was in writing and we have the writing here.

THE COURT: The objection is well taken and sustained.

Q. Then I ask you to explain why you wrote this.

A. Because that was my understanding of it, of this transaction, after the entry had been made. At the time this was made I did not know anything about it.

MR. NEEDHAM: Now, I object to that answer, your Honor. I don't think that the witness when he makes an entry upon directions in writing from the President and authority of the company under which he is acting, can modify it after it has been entered and after it is entered can give his opinion about it any more than he has done.

THE COURT (After informal argument): We will take an adjournment, gentlemen, until ten o'clock tomorrow morning.

Thereupon at four o'clock and forty minutes Court adjourned until ten o'clock the following morning.

At ten o'clock A. M., March 13th, the hearing was resumed pursuant to adjournment.

Thereupon the Petitioner, to further maintain the issues upon his part, produced and caused to be sworn as a witness, F. H. Fee, who testified as follows:

F. H. FEE.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. F. H. Fee.

Q. Where do you live, Mr. Fee?
A. Fort Pierce, Florida.
Q. What county is that?
A. That is St. Lucie.
Q. What is your business or occupation?
A. I am in the banking business and hardware.
Q. What is that?
A. The banking business and hardware.
Q. How many years have you lived down there, Mr. Fee?
A. I have lived ten years in St. Lucie County.
Q. Have you made yourself familiar with the values of land in that county?
A. To a certain extent, yes.
Q. In 1907 did you assist Mr. Dittmar in making valuation of the right of way on the East Coast Railway in St. Lucie County?
A. Yes, sir.
Q. How did you make your valuation?
A. We went over the road and viewed the properties and made inquiries of the property owners as much as we could and used our own judgment, knowing something about the price of land as they were being sold.
Q. Here is a copy of the valuation made by you and Mr. Dittmar, do you consider that those are fair valuations?
A. I do.
MR. ESTERLINE: I object to that, your Honor, the witness is not shown he is qualified to give the value.
THE COURT: What is this, the valuation of right of way, what are these lands, railway lands?
MR. ABRAMS: Yes sir, and in addition are the lands used by the railroad stations, section lands used for railroad purposes.
THE COURT: No other lands than those used for purposes?
MR. ABRAMS: Oh no, no sir, no other lands.
Q. A question has arisen here, Mr. Fee, in regard to section nineteen to thirty-one, which is valued

here at eighty dollars per acre, now what do you know about that valuation?

A. That is in nineteen?

Q. Thirty and thirty-one.

A. In nineteen the railroad seems to run through simply one corner, of section nineteen.

Q. Is that north or south of Osmo?

A. That is the main line north of Osmo, not in the southwest corner, and our estimate of eighty acres was from Osmo south.

Q. Upon what did you and Mr. Dittmar place that valuation?

A. At eighty dollars an acre.

Q. Upon what premises did you base your valuation?

A. We based it upon the price of pineapple land, land used generally for pineapples which it run through. It run through or rather the foot of the ridge, which is planted out in pineapples.

Q. Is that very much of a settlement there?

A. Yes, it is pretty nearly all settled up.

Q. What is that paper you hold in your hand?

A. That is a drawing from the map taken from the records at St. Lucie County.

Q. Does it give you the ownership of the land?

A. Well, it gives the ownership at a certain time. That is the ownership of certain lands through which the road runs through those three sections.

Q. Now, will you let me look at that, please? When did you have this map prepared?

A. On Saturday, last.

Q. Then, it is practically up to date, is it not?

A. Yes, sir. The map shows the record when they were made in that territory.

Q. In that territory, Mr. Fee, is there very much difference in the value of those pineapple lands lying right adjoining the railroad and the lands lying back?

A. Oh yes, the lands on the railroad are worth more, are more valuable on account of transportation being adjacent.

THE COURT: Q. What did you value those lands at?

A. At eighty dollars.

Q. What is the character of the roads there, hard roads or sandy?

A. Oh, very sandy.

Q. Will you point out a mark on this plat the lands in nineteen, thirty and twenty-nine that the records show are owned by Messrs. Hudson and Boggs or either of them?

A. Land marked, the lot marked with an "X" in section nineteen, show the ownership, the title to be in Mr. Hudson. He does not appear to own any in section thirty unless it is along the river bank. I don't think I marked it.

Q. Is that on the line of the railroad, on thirty, you see nothing in thirty?

A. Possibly right in here. I don't think I noticed about those along here.

Q. Nothing in the section at all?

MR. BOGGS: No, there is nothing in thirty.

Q. Now, was there in thirty-one?

A. This lot here and this one, and this one, and this one, those marked with an "X."

Q. Now, in section nineteen I see a little square on there, what does that represent?

A. That represents the station of Osmo.

Q. How much of section nineteen does the road run through the land that stands in the name of Mr. Hudson?

A. Well, it would not be more than—

MR. ABRAMS: I wish you would state, the witness describes the road running through the small strip of the southwest quarter of the northwest quarter of the section?

Q. How much of the land in the name of Mr. Hudson appears the railroad run through in section thirty-one?

A. Well, there would be, I would say, about three-eighths of a mile.

Q. Does it split the land in two, or is it one side or the other?

A. Yes, it seems to in these two lots, splits the land. Goes through a corner of each lot that he owns in section thirty-one.

Q. Then the great demand of these lands is not right on the railroad?

A. No, sir.

Q. What proportion of it would be on the railroad, making an approximate estimate?

A. Well, I don't know about that, Major. You mean on the—

Q. Lying on the line of the railroad right next to the railway?

A. About six-eighths of a mile.

Q. No, no, you don't seem to understand it. Take section nineteen for instance, that would represent a forty.

A. No sir, that would not represent a forty.

Q. That would be a forty, eighty and a hundred and twenty.

A. Yes, a hundred and sixty.

Q. Practically a hundred and sixty acres?

A. Yes, sir.

Q. About what proportion of that section would the road run through?

A. You mean what part, how many acres?

Q. Approximately what would be on the line of the road in or adjoining to the right of way?

A. Well, do you mean what part of the number of acres was used as a railway?

Q. No, sir.

MR. NEEDHAM: I don't know what the purpose of this is, your Honor. I have not objected to it. I don't see that we are interested in how much of that land is in Mr. Hudson's name lies in this section.

Q. Right along the side of that right of way can you form an idea whether it will be twenty acres or forty acres?

A. That would be twenty, that would be ten (indicating).

Q. Half of it would be ten?
A. Half of it would be ten, that is all that would be on the right of way in section nineteen.
Q. Now, take section thirty-one.
A. Section thirty-one, that would be ten and about five.
Q. It would run through one edge of ten according to this plat?
A. Yes.
MR. ABRAMS: Now, I want to put this in evidence.
Q. In making these estimates, Mr. Fee, say you made inquiries as to the prices these lands were selling at?
A. We did at the time, yes.
Q. Now, you say that the Osmo station is in section nineteen?
A. Yes.
Q. Are lands used for pineapple purposes of any higher value in the immediate vicinity of a station?
A. Yes, they are.
Q. Is it not a fact the closer they are to the station facilities the higher the values are?
A. Yes, sir.
Q. Are you in the employ of the Florida East Coast Railway?
A. No, sir.
Q. Have you any connection or association with it at all?
A. None whatever.
Q. Have you any interest in this suit at all?
A. Not at all.
(That's all.)

Cross-examination.

MR. ESTERLINE: Q. Mr. Fee, you say you made an examination of these lands in 1907?
A. We passed over them on a motor car.
Q. Across the entire county?
A. Yes, sir.

Q. What was the distance?
A. About fifty miles, I think.
Q. You went across it in a day?
A. Yes.
Q. In one day?
A. Yes.
Q. Now, these lands referred to in the Exhibit, a description of those lands were furnished you by the Railroad Company?
A. Yes, sir.
Q. You had nothing to do with the looking after the description of it whatever?
A. No, sir.
Q. And you don't recall any specific lands of that exhibit that you inspected or went over, do you?
A. We just took it in a general way, went through in an automobile. We stopped and looked over them lots that were owned by the railway where the station was, and give an estimate there of the values and passed on.
Q. Who else was in this party with you, if anybody?
A. Mr. Dittmar, and I forget—There was a railroad man with us, but I have forgotten his name. He was at that time in charge of canning factory down below Palm Beach.
Q. Who is Mr. Dittmar?
A. Mr. Dittmar is the real estate man in our town.
Q. And you and the railroad man and Mr. Dittmar?
A. Yes.
Q. He was connected with the Florida East Coast Railroad was he?
A. I presume he was, I think he was in the employ of Mr. Flagler at the time, personally.
Q. You say that the great mass of these lands were not on the railroad at all?
A. Not on what?
Q. Not directly adjoined to—
A. Which lands do you refer to?

Q. The lands you refer to in the Exhibit?
A. Marked with an "X"?
Q. Yes, the exhibit that Major Abrams handed you concerning a description of the land.
A. Oh, these lands were all along the railroad right of way.
Q. What do they approximate in acreage? A total?
A. I don't know that.
Q. You have no idea?
A. No, I never figured it up. We made our estimate as to the value per acre unless it was a town lot, then we estimated the value of the lot through the city of Ft. Pierce. The rest of it I think as well as I can remember were based upon the price per acre.
Q. Have you any idea what proportion of those lands were lots?
A. No, I don't know that I have. I didn't go into that.
Q. You had nothing to do with that, you just took the description as it was, which was given to you by the railroad man?
A. Yes.
Q. And went ahead with that?
A. Yes, of course, we were very familiar with the description of the land in Fort Pierce, the lots in Fort Pierce?
Q. But it was true, was it not, that a great many of the lots were not used by the railroad were they?
MR. ABRAMS: I object to that if the Court please.
THE COURT: Well, let him go ahead and let's go ahead with the testimony.
A. I don't think there was very much of the land we estimated the values on that were not used by the railroad company.
Q. Some of them consisted of lots in the city, did they not?
A. Yes, sir.
Q. And you valued those as city lots?

A. Yes.

Q. And you did not attempt to make any distinction in your valuation as to the lands used for railroad purposes or lands used for lots, you just made a valuation by the acre, is that correct?

A. Yes.

Q. And they all went the same, that is, those on the railroad and those off the railroad?

A. Yes, if they were included in our valuation.

Q. And you were not able to state from your recollection any portion of the lands that were off from the railroad or those right on the railroad. You don't pretend to remember that?

A. No.

Cross-examination.

MR. BOGGS: Q. Mr. Fee, with reference to these lots on the little tracing you have introduced here, is it not a fact there was a great many lands in sections thirty and thirty-one adjoined to the railroad tracks that could be bought for less than eighty dollars an acre?

A. It is possible there is, yes, sir.

Q. Well, would you say that eighty dollars an acre in view of the condition there and all of the lands are actually selling for, is the market value of those lands?

A. Well, I would say that I believe that a strip of land along there through those sections, all pineapple lands along those sections of the same width of the right of way could not be bought for any less.

Q. Well, if you take it as a whole, but don't you believe you could go in there and buy quite a good deal of land in those sections, lands that would be joined to the railroad for less than eighty dollars an acre?

A. I expect I could in some instances, in other instances I would have to pay more.

Q. For unimproved lands?
A. Yes.
Q. Do you know of any sales of lands having been made in these sections recently?
A. Yes.
Q. Do you know what price?
A. I recently heard of one sale in section nineteen, I don't know the size of the lot, I don't know how much there was in it, but it was sold for one hundred dollars an acre.
Q. Do you know of any sales having been made in there of considerable tracts for eight dollars and fifty cents an acre?
A. Why, I believe I heard some time ago that there was a sale of some of those lands there at eight dollars and a half an acre.
Q. That was since the date that you made these valuations was it not?
A. Well, now, I don't know as to that.
Q. Have you heard of any sales in forty-acre tracts of land adjacent to the railroad in those sections to be sold at thirty dollars an acre?
MR. ABRAMS: If the Court please, I don't think that is fair, you don't buy railroad land by forties.
THE COURT: That is proper in cross-examination in order to test the accuracy of the method used, I think it is competent.
A. I heard of some sales in those sections in thirty or forty, I would not like to say which, in section nineteen, I think. I heard of sales in section thirty at fifty dollars an acre. I don't know that it was adjoining the railroad in either case.
(That's all.)

Re-direct examination.

MR. ABRAMS: Q. From your knowledge throughout, taking these lands right adjoining the railroad all along here, do you think you could get those lands to-day if you wanted them for railroad purposes at any less than eighty dollars an acre?

A. No, sir, I don't think I could.

Q. Do you think those people would sell them for eighty dollars an acre.

A. I doubt that they would.

Q. Now, in these parts of these sections that you are aware are owned by Messrs. Hudson & Boggs, do any part of them require ditching or draining before they become valuable for agricultural purposes?

A. I think they would in the main be required to be ditched.

Q. Mr. Fee, with regard to Fort Pierce, does not the railroad track and the yard lie right in the town?

MR. ESTERLINE: Before we leave this exhibit your Honor, we will look at it. We objected to it when it was before Judge Archbald, on account of those descriptions in there. There is twelve hundred dollars' worth of land included in here and that goes on and explains it is for railroad purposes. That statement was objected to for that reason when it was offered, but, of course, we do not want any waiver of our objection by letting this go in.

MR. ABRAMS: Oh, no, I don't want you to waive anything. Your Honor will understand that Fort Pierce is a sort of probational headquarters, a large yard and buildings and all there.

THE COURT: I understand that this goes in subject to any objections that are made hereafter. It may all go in subject to that exception.

Q. I asked you is not there a railroad yard at Fort Pierce?

A. Yes, sir.

Q. Doesn't that run through these lots?

A. Yes, sir, some of them does.

Q. Was that town planted in the lot before the railroad ran through?

A. Some we had before and some afterwards.

Q. Have you any knowledge as to whether or not since you made that valuation the railroad company has had to purchase any more land there?

A. Oh, yes, sir, had to purchase considerable.
Q. What's that?
A. They have had to purchase considerable afterwards.
Q. Do you know what they are doing with that land they purchased?
A. They are using it largely for yard purposes to bring sidings on, and will put a roundhouse on it, move the roundhouse from where it is and the water tank and so forth. They had got quite a large yard down there.

Re-cross-examination.

MR. BOGGS: Q. You have stated some of those lands adjacent to the railroad would require ditching, that is true of the lands in the railway, is it not?
A. No.
Q. None of the lands in the railway?
A. Well, not in that section, no.
Q. What about section thirty-one?
A. Not where the railroad would run, no, that is upon part of the ridge.
Q. Well, take the lands that are adjacent to it, would be in the same position wouldn't they as to ditching?
A. I would say that they would on the eastern side.
Q. There is no sharp line of demarcation between the railroad right of way and the lands adjacent with reference to the subject of ditching is there?
A. Well, the right of way is along the edge of the ridge. The ridge has had a growth of hard wood scrubs on it and it is on those lands that are largely used for pineapples, this high ridge land, and the railroad right of way is along the edge of it. On the other side next to the river the lands are low and unsuitable for pineapples. The soil is good but to make it valuable for the growth of citrus fruit or vegetables it would be necessary to have it

ditched, most of the lands on that side of the railroad.

(That's all.)

(Witness excused.)

Thereupon the Petitioner to further maintain the issues upon its part produced and caused to be sworn as a witness, one F. W. Kirtland, who testified as follows:

F. W. KIRTLAND.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. F. W. Kirtland.

Q. Where do you reside, Mr. Kirtland?

A. St. Augustine, Florida.

Q. What is your business or occupation?

A. General Freight Agent of the Florida East Coast Railway.

Q. How long have you held that position?

A. Nearly four years.

Q. How long have you been engaged in the railroad business?

A. Since 1886.

Q. What other roads have you been employed by?

A. I was chief freight clerk of the Louisville and Nashville Railroad up since 1895, and then went chief freight clerk of the old Plant system until 1901. After that chief freight clerk to the General Freight Agent and then division freight agent for the Atlantic Coast Line at Jacksonville, Florida, until August 1, 1908. Since then I have been general freight agent of the Florida East Coast Railway.

Q. As general freight agent, what is your business, what have you got to look after?

A. Well, I look after rate adjustments and claim matters and everything pertaining to the traffic of the road. The development of the traffic.

Q. Have you got to look after the movement of freight?

A. Yes.

Q. Mr. Kirtland, do you handle any phosphate kaolin or cotton?

A. None at all.

Q. Any fuller's earth?

A. None whatever.

Q. What is your handling of timber and lumber?

A. Well, it is a very small part of the business. The bulk of lumber and material on our line is purchased by the Company. We handle very little lumber manufactured on the line for consumption. The timber interest on our line is so small that most of the timber has to be bought in other States and shipped in.

Q. Now, do you handle any export timber or lumber?

A. Practically none. I don't know of any export. I don't think we handle a pound of export.

Q. Your record here shows the tonnage. Now, with regard to naval stores, how much do you handle?

A. Well, I haven't that information with me Major, but that is shown in the report.

Q. In that exhibit?

A. In the exhibit in the Petition, yes, sir. That shows the amount of naval stores, lumber actually handled.

Q. What is the great mass of your freight produced on the line of the road?

A. Oh, that is, of that produced on the line it is practically all perishable traffic. First comes the vegetables and pineapples and oranges, about equally divided, but that is practically all of the traffic which is produced on the line. Perishable traffic.

Q. Now, in the handling of your perishable stuff, do you use the same cars that are used in handling the other kind of freight?

A. No, we do not.

Q. What kind of cars do you use in the handling of oranges, fruit and vegetables?

A. We handle two classes of equipment, one known as the double felt-lined ventilated car, the other is known as the ventilated refrigerator. Certain seasons of the year the shippers all want to ship in what is known as the refrigerator so as to protect it from extreme cold. They don't know where the shipment is going. It may be going to Seattle or Salt Lake or up in the New England States where they get severe temperatures, and they want that refrigerator which has a very thick side so as to protect it against any extreme temperature. And then as the spring progresses along about the first of April, they don't want the refrigerator any more because they can get better ventilation then out of the felt-lined box car. They want a car then that has more actual ventilating space so it can be opened up on the end and sides, and as the weather gets warmer they demand that. They don't want the refrigerator because of the ventilation through the top. So our equipment has to be regulated by the time of the season, the time of the year.

Q. Who supplies that equipment?

A. We get the refrigerator cars from the Armour Company, pay them in mileage of three-quarters of a cent a mile for both directions. The ventilated box car we get from our connection with the Atlantic Coast Line and the Seaboard Air Line Railway and the Southern, on which we pay the Southern, on which we pay them a per diem of so much per day.

Q. Your road has no line outside of Florida?

A. No, sir, we don't operate outside of Florida.

Q. Now, then, in regard to the ventilated cars and the refrigerator cars, can you state approximately what it cost the East Coast to purchase that equipment?

A. Yes, sir, I can; I looked into that very thoroughly on several occasions.

MR. NEEDHAM: We object to this line of testi-

mony simply to preserve any objection to it. It makes no difference whether a road finds it to its advantage to buy or rent, that is a matter for it to determine. It does not effect the question of what is a reasonable rate for transportation of traffic. What he has been testifying to as to the different type of cars at different times is probably correct, but whether they find it to their advantage to buy or rent, we object, and simply preserve the objection.

THE COURT: Well, let it go in subject to the objection.

Q. State what it would cost.

A. Well, as a preliminary to that, Major, I will have to make this statement. The reason why we have found it necessary to look into this question of the purchase of equipment, the largest part of our traffic is the vegetable traffic that moves, beginning about the 15th of March up to about the 15th of May. We have found by experience that at that period of time the Southern roads are handling a mass of fertilizer traffic and we have had extreme difficulty in renting from them the supply of equipment to handle this traffic and we have had before us all the time the responsibility for handling the shipments as promptly as they were offered, and we have realized that a condition might come about when we would be unable to rent this equipment so that in order to be on the safe side we have had to look into the question of purchasing equipment so as to be able to furnish it when it was offered. And we have that condition before us right now, most extreme situation. Up to date, the movement of fertilizer is only about twenty-five per cent of what it was last year. And we have had to give a great deal of consideration to this question of purchase of equipment, and the only thing that has kept us from the purchase is the amount of money. I will tell you just what it means. We have about ten thousand cars of perishables to move in a short pe-

riod of time, and figuring at the lowest estimate of the amount of equipment we could possibly get along with, we figure four thousand ventilated box cars and one thousand refrigerators.

Q. Can you state in round figures?

A. Yes, it is four thousand ventilators and one thousand one hundred dollars a car, and a thousand refrigerators at one thousand five hundred and forty dollars a car.

Q. What would that be in round figures?

A. A little over five million dollars.

Q. Would be the capital that would be required?

A. Yes, sir.

Q. As it stands now you rent those refrigerator cars?

A. Yes, sir. Now, you understand that if we had purchased this equipment that is not the end of it. There is about eight months of the year that we would have to store that equipment, we would have no use for it and we would have to build side tracks to store that equipment that would be another heavy expense, about five thousand cars would require about thirty-eight miles of side track. We naturally would not build one big terminal yard. We would build them out over the road. Build probably a track a mile long on different lines so that we could spread them out, and at the same time have those tracks for passing tracks.

Q. Could you leave them out in the open?

A. No, sir, we would have to protect them, have to guard them and that would cost us about, a watchman day and night would be over a hundred dollars a month for each track, that would be about twelve hundred dollars a year.

MR. ABRAMS: Now, can't you agree that we paid fifty-two thousand dollars for the hire of these cars last year, it is in our sworn report, in our report to the Interstate Commerce Commission and the Interstate Railroad Commission.

MR. NEEDHAM: I object, of course, to the material-

ity of it. So far as the fact is concerned, that is what the report shows.

THE WITNESS: I have these tabulated figures so that I can give the tabulation. Four thousand ventilators at one thousand one hundred dollars is four million four hundred thousand dollars. One thousand refrigerator cars at fifteen hundred and forty dollars is one million five hundred and forty thousand dollars, making a total of five million five hundred and forty thousand dollars. The construction of the side track necessary to store those cars would be two hundred and twenty thousand dollars, making a total investment of six million one hundred and sixty thousand dollars. The insurance on that equipment would be ten thousand five hundred dollars per annum. The employment of men to guard and protect them from fire would be forty-five thousand six hundred dollars per annum.

Q. That is without counting the interest on the money?

A. That is without counting any interest on money. Now, I will say this, it is possible we might have to buy this same—

MR. NEEDHAM: I object to that, your Honor.

MR. ABRAMS: That is all right.

THE WITNESS: It is a pretty serious proposition we have got before us right now.

Q. Now, Mr. Kirtland, how do you get those ventilators and refrigerator cars down to the point of production?

A. We haul them in extra trains.

Q. To what extent can you utilize those cars in carrying freight down?

A. Well, we utilize it in every way possible, for instance we know where crate material is purchased in Florida, a large part of it is purchased in Jacksonville from the Cummer Lumber Company and some of it is purchased at Plant City, Crystal River. We take it up with the railroad entering those points and ask them to furnish to the crate material people

felt-lined ventilated cars so they can be loaded in that territory and when they are unloaded we can get a load back, and there is a certain amount of fertilizer going into the territory at the same time the other stuff is being shipped. We make the same arrangements to load the fertilizer from other points on other lines. We endeavor as far as possible to get a load for the equipment we need going back. But the records show last year we actually handled going south from Jacksonville, five thousand six hundred and twenty-nine cars empty.

Q. Out of a total of what?

A. Out of a total approximately of ten thousand cars used in loading perishables. Now, in addition to crate materials and fertilizers, we load some fertilizers in Jacksonville in those cars. For instance, take all our vegetable shipping sections at a point like Daytona. We will load all merchandise we have for Daytona in one of those cars regardless of tonage, that is if it is only five hundred pounds or a thousand pounds, we utilize it as far as we can, and taking it all together I figure we get about twenty-five per cent of the load, south bound load and haul about seventy-five per cent of the equipment empty.

Q. That would be for ten thousand cars?

A. Would haul about seventy-five hundred empty, yes, sir.

Q. Now, Mr. Kirtland, in the matter of fruit trade, south bound, what becomes of the cars after they are loaded?

A. They are hauled back empty, almost invariably hauled back empty.

Q. About what proportion would you say was carried loaded and hauled back empty?

A. Outside of this crate material and fertilizer as I have mentioned, I would say all of it, there is not one per cent that is loaded back. The reason for it, Major, is this freight coming in comes from the west. They have no ventilated cars out there, they load it in solid box cars, packing house product is

loaded in the refrigerators, it is entirely different from the cars the vegetables is loaded in, it has no ventilation in it at all, it is a refrigerator car strictly, and the vegetables have to be loaded in a combination ventilation and refrigerator, so that whatever it is, packing house product, wagons or whatever it is, is unsuitable for loading perishables, so that the result is that practically all of our south bound movement is to load one way and empty the other.

Q. Now, can you state approximately how many cars of south bound freight was moved last year, of all things, everything outside of these refrigerator cars that you have to rent?

A. Well, I have not figured that up, but I did figure it up for January and February this year in an entirely different matter. We figured on the amount of schedule of through trains for January and February of this year, the south bound load amounted to eighty-five cars a day for those two months.

Q. The movement then is much larger going down in the short time you have to handle the refrigerator and ventilated cars you rent?

A. Yes, sir.

Q. Practically everything else you bring back empty?

A. Practically all empty except those things I mentioned, crate material and such.

Q. Now, I wish you would explain the movement of vegetables and citrus fruit.

I will state to the Court I did not add pineapples because in 1910 we agreed on account of the Cuban competition to reduce the rate on pineapples. That is not a factor at this time at all, we are having the reduced rate enforced now. The rate fixed by the Interstate Commerce Commission; so that I excluded in this the pineapples although the same condition exists as to these.

A. What is the question?

Q. I want you to state the movement of vegetables

and citrus fruit in car load lots and in not car load lots.

A. You mean by that our total movement?

Q. Yes, and then I want you to explain what percentage is in car load lots and what point of destination you receive from shippers in less than car load lots, you make them all up at South Jacksonville?

A. This statement gives the movement of vegetables here since 1894.

Q. Now, this purports to give from 1894 to 1911?

A. Yes.

Q. Now, just go on and explain this in your own way.

A. What is it you want to know about it?

Q. The movement. I want, say, first, to explain what proportion of this entire volume of vegetables shipped in solid cars by one consignor to one consignee and point of production and what proportion you have to make up at South Jacksonville.

A. Well, I don't suppose you want that from 1894 up to date, do you?

Q. Oh, no, just the present time.

A. Well, of the average traffic for the year ending June 30, 1910, fifty-nine and eight-tenths of that traffic moved from one shipper or one consignor to one consignee.

Q. From point of production?

A. Yes. And in 1911, 69.2 per cent of the traffic moved from one shipper to one consignee.

Q. Now, how would the balance move?

A. That was shipped in less than car load quantities from South Jacksonville and consolidated in the cars there. We have a station at South Jacksonville, and we take all the miscellaneous stuff and separate it and assort it and then load it over. Load all freight for New York, for instance, and it goes through to New York without a transfer. The same applies to Baltimore, Atlanta and all the large markets. We assemble all this miscellaneous car load shipments, assemble them and then load it in the cars at the station in South Jacksonville.

Q. Who consolidates those cars in South Jacksonville?

A. Our agent.

Q. The proportion then last year was 69.3?

A. 69.2 per cent.

Q. The other thirty-eight?

A. The previous year was 59.8.

Q. I mean last year, there was a decrease percentage of solid cars?

A. Ten per cent higher. We are speaking of vegetables now you understand.

Q. Now, I want to go back to this table, I want you to show, as this table shows, show the movement of vegetables on this East Coast Railroad for the fiscal year ending June 30, 1894, for the fiscal year ending June 30, 1911. That is these tables.

A. Yes, sir.

Q. Now, I find on this that the average rate per package in 1894 was 12.77, how do you account for that?

A. At that time the vegetables were grown very much further north, that was before the big freeze, oranges were grown around here, they were shipped for short distances.

Q. Now, these tables show an approximate average rate, approximate per package on vegetables each year, what is the tendency now for the production of vegetables as to where they are produced?

A. They are going to the end of the main line just as far as they can below the frost line. The greatest increase on our line for the past three years has been south of Miami. The acreage between Miami and for thirty miles south of Miami to-day represent thirty per cent of the acreage of the line.

MR. NEEDHAM: You are speaking of vegetables now are you?

A. Yes, sir, I am speaking of vegetables now. Now, this is absolutely accurate because we get it up by the name of the growers and the number of the cars.

Q. Now, is it not a fact that the increased production of vegetables further south has been followed by a decreased production of vegetables like tomatoes and the like further north?

A. Well, yes, there is no production of tomatoes now north of Palm Beach to speak of. There is a little but then they have so much cold weather they have found it is impracticable.

Q. Has not that been quite marked in the last two or three years?

A. It is more pronounced every year, until now we don't consider there is any vegetable traffic north of Palm Beach to speak of. There is a little, except the potato proposition and that is in Hastings.

Q. That is quite far north here.

A. Oh, yes, that is in this county, but that is a production however, that is not affected so much by frost.

Q. Now, you say this table is taken from the official record?

A. Yes, sir, from the official record.

MR. ABRAMS: I offer this in evidence.

MR. NEEDHAM: I understand this testimony is all introduced under general objection.

THE COURT: Yes.

THE WITNESS: I would like to call your attention to one interesting feature. You will notice there has been a steady increase in the production of vegetables and that increase seems to have been continuing each year regardless of the question of rate in the territory of our road. We had rather a peculiar situation in 1902. We had a rate at that time at Miami of thirty cents a crate and the Railroad Commission thought that was high. Our earnings not sufficient to justify the reduction, but after much persuasion we reduced that rate and hoping the movement next year would increase sufficiently to offset the reduction in the rate, but the biggest reduction we made was not followed by any increase in production, but there is material decrease in revenue.

It is a peculiar coincidence that whenever the freight rate is reduced the production becomes normal, and it only goes to show that it is not a question of freight rate that covers these things but a question of climatic condition and market condition entirely.

Q. I notice in 1904 your production of vegetables was one hundred and five million nought fifty-one thousand six hundred and fifty-two packages, and it fell off the next year to seven hundred and ninety-eight thousand, and then rose to eight hundred and forty-seven thousand in 1906, how do you account for that?

A. I don't know, I was not here then.

Q. Was there any climatic trouble?

A. I don't know, I was not here.

Q. Is it not a fact that this traffic is subject to fluctuation resulting from climatic condition?

A. I have just explained that was the cause of the fluctuation.

Q. For the fiscal year ending June 30, 1910, you show an average per train of nineteen nought two, for the fiscal year ending June 30, 1911, that falls to 16.90. Explain how that was.

A. Well, for the year ending June 30, 1910, is the year the large increase in acreage south of Miami set in. There was a very heavy acreage south of Miami that year and that resulted in a higher average on account of the longer haul.

Q. Now, did you not make a reduction of rate in July, 1910?

A. Yes, from that immediate section we made a reduction in vegetables in that immediate section that I am speaking of. We made a reduction from thirty-five cents to twenty-four cents in vegetables.

Q. Eleven cents a crate reduction?

A. Yes, sir, and that is responsible for the decreased average.

Q. Your records show that your income for vegetables for the fiscal year ending June 30, 1910, was five hundred and eighty-one thousand seven hundred

and seventy-eight dollars and seven cents. This year it fell to four hundred and eight thousand eight hundred and seven dollars and five cents.

A. That was due to the reduced freight while slight decrease in the movement, a slight decrease in the movement, the decrease in the revenue was on account of the reduced rate.

Q. Well, on this exhibit can you show approximately the difference between the movement this year and the movement during the same period of last year?

A. Yes, sir, I can.

Q. Show it.

A. Since July 1, 1911, to March the first of this year, the average movement shows a decrease of thirty-nine and a half per cent over March 1st and March the 10th of this month it shows a decrease as compared with last year of fifty-nine and three-tenths per cent.

Q. That is you are carrying that much less freight of vegetables?

A. Yes, sir.

Q. Give the figures.

A. The number of crates handled from July first, 1911, to February 29, inclusive, 1912, was 88,221 crates, as compared with the movement of 145,864 crates for the same period of last year, making a decrease of fifty-seven thousand six hundred and forty-three crates, or 39.5 per cent. Now, from March the first to the 10th, inclusive, 1912, we handled 76,276 crates, of the same period last year we handled 187,-181 crates, the decrease for the ten days in this month is one hundred and ten thousand nine hundred and fifty-five crates, or 59.3 per cent.

Q. To what do you attribute that decrease?

A. That decrease this year as compared with last year?

Q. Yes.

A. Climatic condition caused by rain and cold weather.

Q. That has been notorious all over this State this year has it not?

A. Yes, sir.

Q. Now, Mr. Kirtland, while you are on that subject, so as not to have to go back to it, please state to the Court what the movement of citrus fruits were approximately up to the present time as compared with last year.

A. From July 1, 1911, to February 29, 1912, inclusive, the movement was four hundred and seventy-five thousand five hundred and fifty-one crates. For the same period of the previous year, five hundred and fifty-five thousand four hundred and ten crates, a decrease in the movement of seventy-nine thousand eight hundred and fifty-nine crates or 14.4 per cent. March 1st to March 10, 1912, twenty-five thousand five hundred and forty crates. For the same period of 1911 thirty-two thousand nought ninety-three crates, a decrease of six thousand five hundred and fifty-three crates, or 20½ per cent.

THE COURT: That is all citrus fruit?

A. Yes, sir. This last is citrus fruit. Grape fruit and oranges.

Q. And limes?

A. No, we don't ship any limes at all.

Q. Now, last year by this time of the year, isn't it a fact that a great mass of the citrus fruit had been shipped?

A. Yes, and more so this year than previous. Prices have been very high this winter, most for grapefruit, and since the first of the year oranges have been very high, which has resulted in the crops being moved out much more rapidly, and we will have a very much greater proportionate deducted in the movement of citrus now open from now on from what the figures show up to date because it is practically all shipped, you can't find any citrus fruit hardly at all. It is practically all out of the State.

Q. Have you got a statement showing the movement of citrus fruit similar to this of vegetables?

A. Yes, sir.

Q. This gives the production of citrus fruit from 1894 to 1911, does it not?

A. Yes, sir.

Q. According to this in 1894 you had two million two three hundred and eighteen thousand five hundred and seventy-nine crates, last year seven hundred and forty-seven thousand nine hundred and thirty; how can you account for the three thousand—

A. I don't understand that.

Q. I see the aggregate here as it appears is 747,930 crates, while in this total it is 744,188.

A. That tabulation only gives the oranges moving through Jacksonville, that is the total movement, that is went to other local stations.

Q. Oh, I see.

A. This shows all the movement.

Q. That would be a matter of difference of about three thousand eight hundred crates?

A. Yes, sir.

Q. Now, did you make any reduction of rate on oranges and citrus fruit in 1910?

A. Yes, sir.

Q. I see that the average rate per package increase from twenty-two to twenty-eight in 1910 and twenty-two to ninety-six in 1911, explain about that apparent increase per package.

A. It is on account of the increased movement from Dade County, that grape fruit, that is where all the development has taken place. There is no increase in the citrus fruit in what is known as the Indian River section. It is practically stationary. All the increase has occurred in Dade County. That is in the grape fruit culture, so that difference is accounted for in that way. The increase movement came from far distant points.

Q. Is it not a fact that as you go further north it is either stationary or there is a slight decrease?

A. Well, it is not growing anywhere north, north

of the Indian River section, and after you get north of Ormond there is practically no oranges. There may be some few little groves.

Q. Were there any planted years ago?

A. Oh, my, yes. In 1894 where you see three hundred and eighteen thousand they were nearly all from here. They were raised all around here in St. Augustine, that is where the oranges came from at that time, or further north.

Q. Now, Mr. Kirtland, that increase indicates a smaller crop for the fiscal year ending June 30, 1912, than 1911; can you explain to the Court how that occurred?

A. Well, it was weather condition, wet and very dry. We had a very dry winter during the bloom period. We had no rain so the trees did not set the bloom and a great deal of the bloom on account of lack of rain fell off.

Q. That is dropping of the fruit?

A. Yes, sir.

Q. That did not affect the acreage?

A. No, but it affected the movement.

Q. And these are the result of climatic conditions?

A. Yes, sir.

MR. ABRAMS: I offer this in evidence.

Q. Now, this shows a slight increase in the aggregate amount received by you, now will your revenue for the fiscal year ending June 30, 1912, be as large as for the last year?

A. Decidedly not.

MR. NEEDHAM: I object to that question.

MR. ABRAMS: On what grounds?

MR. NEEDHAM: Why, he don't know anything about it.

THE COURT: That would be a mere opinion.

Q. Now, I go down to the pineapples, the record here shows exhibit sixteen, the fiscal year ending June 30, 1911, there have been successful years from 1909, high water mark, one million one hundred and ten thousand five hundred and forty-eight; in 1910,

seven hundred and thirty-three thousand three hundred and fifty; in 1911, five hundred and sixty-three thousand, three hundred and fifty, making a reduction of revenue from two hundred and seven thousand eight hundred and eighty-nine dollars to one hundred and nineteen thousand three hundred and ninety dollars; now when does the pineapple season open, about when does it close?

A. It opens about the middle, 15th or 20th, of May and continues about to the 4th or 5th of July. Of course, there is some scattering movements before and after.

Q. When is the great mass over?

A. The great mass is over about the 4th or 5th of July.

Q. Now, can you show what was received from June 30, 1911, up to the present time?

A. No, I did not think pineapples were to be considered.

Q. Can you say whether or not there has been any decrease?

A. I don't know, I didn't look into that question at all.

Q. I wish you would do that to-night; will you do that for me, Mr. Kirtland? I want to see if it has increased or diminished.

A. You mean since July 1st?

Q. Since June 30, 1911.

A. Well, it has not, pineapples' busiest season is over by the first of July.

Q. But it has not been yet, you can't tell about that.

THE COURT: You have shipped none at all?

A. Oh, yes, a few crates we have just a few ripe at the first of season to be shipped in small lots.

Q. Do you keep advised of the acreage condition and things generally on the line of the road?

A. Yes, absolutely, I know every acre that is planted and who has planted it.

Q. Why have you got to do that?

A. In order that we can provide the necessary equipment to move the crop. Furthermore, in addition to keeping advised of the number of acres planted we also keep fully advised of the condition of the growing crop as to when it will move for the same reason.

Q. Now, have you any data if you can recall it as to the prospect of the pineapple crop?

A. I have; I have been all over the fields and had it done.

Q. What is that?

MR. NEEDHAM: I object to that line of testimony your Honor.

THE COURT: Oh, I think he can show what the general estimate is. Let him answer.

A. Well, it has been badly damaged by cold and it is going to be short.

Q. I think you stated that a while ago—

THE COURT: Where is the bulk of the pineapples raised?

A. It begins about twenty miles north of Fort Pierce and then goes as far south as Jupiter.

Q. Where is Jupiter?

A. It is just below Palm Beach. And then there is a jump from there and then there is no other production until just north of Miami, that is not very much. Along the Indian River is where most of them are produced.

MR. ABRAMS: Can you state to the Court the different rates on citrus fruit and vegetables since 1897?

A. Yes, sir, I can.

Q. Have you got it tabulated there, if you have please give it to me.

A. I don't know that I have as many copies as you want, though.

Q. Now, Mr. Kirtland, what was the rate on any quantity of—This first column shows the rate in 1907?

A. Yes, sir, and this is in 1910.

Q. Where did the reduction begin on citrus fruit?
A. When, in 1902, you mean?
Q. From 1907.
A. 1897?
Q. Where did the reduction begin?
A. Well, it began out here at one hundred miles, the grown reduction began at one hundred miles.
Q. Now, do you have much citrus fruit?
A. None at all.
Q. Now, then, state about where that citrus fruit begins.
A. Well, the Indian River section is about a hundred and fifty miles. It runs from a hundred and twenty-five to a hundred and fifty miles, that is the Indian River section up through Smyrna and along there, and then the next citrus fruit section is the Miami section, about four hundred miles.
Q. You have testified that the principal increase in citrus fruit is in the southern part of the State?
A. Beginning at three hundred and sixty going to four hundred, the bulk of the increase has occurred right in that section, from three hundred and sixty to four hundred.
Q. Now this 1910 column shows a decrease?
A. Yes, sir, for instance, we took Homestead, which was at the end of the line. Homestead was a furthest point.
MR. NEEDHAM: Q. That is four hundred miles?
A. Four hundred miles. The rate from Homestead was forty three cents and we reduced that to thirty-one cents on car loads and thirty-four cents on less than car loads.
Q. Now, was it forty-three cents in 1910 before you made that reduction?
A. Yes, sir. When it was changed, when it was first made effective I think it continued in effect from 1904 to 1910. Now we made those changes in this way. After we had agreed to put in the pineapple rate on car loads and less than car loads, agreeing with the Commission that that was proper

basis, we thought it ought to be cheaper for car loads than less than car loads. We then felt that we should put vegetables and citrus fruit on car load and less than car load basis, and we proceeded to work up a tariff that we thought was fair and reasonable rate. We started at Homestead four hundred miles, and we reduced that rate from forty-three to thirty-one and thirty-four.

Q. Thirty-one would be car load rates, and thirty-four?

A. Less than car load rates. And we made a certain reduction for every twenty miles. You will find that was in gain.

MR. NEEDHAM: It shows on the face that?

A. Yes, it shows right on the face of it.

Q. Now, the rate ordered by the Interstate Commerce Commission is shown there?

A. Yes, sir. That took me down still further. That would cut it down twenty-seven car loads and thirty cents less than car loads, which is four cents a crate.

Q. Now, will you say in 1897 the rate shown was thirty-seven?

A. Thirty-seven, yes, sir.

Q. In that territory?

A. Well, you see in 1897 we hadn't gone south of Miami. Miami was thirty-seven.

Q. In 1904 the rate was thirty-seven and you have reduced it—

A. Thirty-seven from where, Homestead?

Q. From Miami.

A. Yes, thirty-seven.

Q. And you have reduced it to what?

A. Thirty cents a car load and thirty-three cents less than car loads.

Q. Then, your reduction has covered not only car load rates but also less than car load rates?

A. Yes, sir.

Q. Now, between Miami and Homestead where the greatest development has taken place the rate

has been reduced from forty-three to thirty-one for car load rates, and thirty-four cents for less than car load rates?

A. Yes, sir, that is correct. In 1897 the rate on vegetables any quantity from Miami—

Q. Now, one moment I want to get in where the great mass of vegetables come from. I think that is shown in the supplemental petition, if your Honor please, the great mass of vegetables began somewhere at Boynton, three hundred and twelve miles, or in round figures at Hypoluxo, three hundred and nine miles.

A. Yes, sir, that is approximately correct.

Q. What was the rate in 1904?

A. Where from?

Q. Say three hundred and ten miles.

A. Three hundred and twelve miles in 1904 or 1897?

Q. Way back as far as you got it.

A. Well, in 1897 the rate from Hypoluxo was thirty-one cents, any quantity. In 1902 we reduced that to twenty-five cents.

Q. What reduction did you make in 1910?

A. We reduced it to twenty-one cents car load lots and twenty-four cents less than car loads. The Petition has ordered in effect sixteen cents car load and nineteen cents for less than car loads.

Q. Now, go down, where is the territory you have had your greatest increase in between Miami?

A. It is south of Miami is the greatest development, well, take Hypoluxo and Boynton, those are large shipping points.

Q. Well, take Boynton.

A. In 1897 the rate from Boynton was thirty-three cents any quantity. In 1902 they reduced it to twenty-five cents any quantity. In 1910 we reduced it to twenty-two cents car loads, and twenty-five cents less than car loads. The Commission ordered in effect January 2d eighteen cents a car load and twenty-one cents less than car loads.

Q. Now, go further down.

A. Take Miami. In 1897 the rate from Miami was thirty-five cents any quantity. In 1898 we reduced it to thirty cents any quantity. In 1902 still further reduced to twenty-five cents any quantity. In 1910 it reduced car load twenty-three cents and less than car loads twenty-six cents. Now, that shows an increase of one cent per crate on less than car loads, but there is no less than car loads moving from Miami to speak of only a few crates of ripes shipped under less than car load lots.

Q. What do you mean by ripes?

A. Too ripe to be shipped to market and shipped to nearby places.

Q. Now, that is reduced to eighteen and a half—

A. The Commission has ordered in effect eighteen and a half in car loads and twenty-one in less than car loads.

Q. Now, take Homestead.

A. Homestead section is four hundred miles. In 1904 the rate from Homestead was thirty-five cents any quantity, and that rate remained in effect until 1910 when it was reduced in car loads twenty-four, and less than car loads twenty seven. The Commission has ordered for car loads nineteen and less than car loads twenty-one.

Q. Now, Mr. Kirtland, if you have shown where you got the equipment that is the cars that you furnish, that you hired, do you charge anything extra over your rates to the shippers for the use of those cars?

A. We do not.

Q. Now, I want you to state to the Court what your practice is in the handling of these vegetables, for instance, during the shipping season, how do you handle them?

A. Well, it, of course, is an abnormal condition, and an extraordinary service. It comes on at a short period of time and moves in large volumes. We cannot tell, say, to-day, what we may reasonably ex-

pect for to-morrow. It is covered by many things. To-day the market might not be satisfactory, the weather might not be satisfactory and we might prepare to handle seventy-five to a hundred and fifty crates and we might not get half that many.

Q. You don't seem to catch what I mean. I want to show what method. You just simply take a car at Homestead, for instance, or do you have to gather them up.

A. Well, I am coming right to that.

Q. What do you call that train?

A. A pick up. As I say, one day it will come light and the next day we might have twice as much as they had the previous day. We might have one hundred to-day and two hundred to-morrow. Now in the heaviest shipping season in order to get the trains over the road we put on what we call pick-up trains, that goes ahead and pushes out at these places and sets them in the siding.

Q. Where does the train take them?

A. It makes up the train and sets them in the first passing siding they come to. That pick-up train usually operates from Miami up to Palm Beach.

Q. From where?

A. From Miami up to Palm Beach.

Q. That is the territory where the most of the vegetables are?

A. Yes, sir.

Q. Now, where do you make up your trains that you send off?

A. Well, they are made up right there by the pick-up. Of course, after the train goes, after the train goes north and the pick-up stops, they are loaded with vegetables and that train which is a pick-up takes up part of the train, and will take up the pick-up north of the place where they pick up stock.

Q. Do you follow this pick-up train with a regular freight or any other train?

A. Oh, yes, we follow the pick-up train with three or four other trains.

Q. And this pick-up train is an additional expense in the handling of the vegetables, is it not?

A. It is done to enable us to get a train over the road quickly. It is an additional train put on to prevent delay to the through freight, so as to push out the cars so as the through train can get them without delay.

Q. Now, will you explain to the Court the facilities you afford the people there on the line of the road, which cover everything, pineapples, oranges, vegetables and everything in the way of transfers or sidings.

A. Well, we have a very peculiar condition in the pineapple section. The roads are so sandy that they can't haul any load, they couldn't haul anything through that sand to speak of, and in order to save the growers the heavy expense they would be put to in hauling a few crates to the railroad we have simply, all through that pineapple country, built side tracks not over a mile apart so that the distance between those side tracks would be not over a half a mile, the haul would not be, so that the longest haul between those side tracks would be more than half a mile. I know of one place a distance of four miles that there is seven loading tracks in the four miles. It is that way all through the pineapple section wherever they have those heavy roads.

Q. Is that in addition to your station siding?

A. Yes. They average all through that section I don't suppose over a mile. In some places it is a mile and a half or two miles, or some places closer even, but I would say that the average is about a mile apart, making the maximum haul about a half a mile.

Q. How are these average farms down south here, are they all or most of them close to the railroad?

A. Well, along there where the road is run, they are not right on the railroad, some of them are and some of them are far in the woods. You know in growing vegetables they hunt good land. They plant wherever they find the land.

Q. What sort of land do they have to go over to reach the railroad?

A. Most of it is good hard rock road. They strike the rock road as soon as they can. You know it is a good hard road all through that country. That is the main road and the main road runs along by the railroad and the packing house is located on this line.

Q. They don't have to haul from the packing house to the railroad?

A. Not at all. Nearly all the packing houses are located right on the railroad. There may be some few back but very few. The tomatoes are packed usually in the packing house. A man will operate a packing house and the growers will bring the tomatoes in the field baskets and he packs them up for maybe fifteen or twenty growers. He usually acts as a broker for the sale of the tomatoes, usually in which he gets five cents a crate as a general custom in addition to his packing house.

Q. Have you investigated, could you say how these vegetables are handled where they are usually sold?

A. They are usually sold right there on the track wherever they can and the cost of them—now, this year—it depends on market condition. This year I would say that fully ninety per cent of the tomatoes will be sold on the track F. O. B. there.

Q. I am speaking ordinarily.

A. Ordinarily fully seventy-five per cent is sold there.

Q. Right at the packing house?

A. Yes.

Q. When that is done the grower is not called upon to pay freight?

A. Absolutely none. He has no ownership in them. The buyer pays the freight.

Q. You say in ordinary cases it is sold right there?

A. Yes, sir.

Q. How is it in reference to pineapples?

A. Well, pineapples vary. Pineapples have had a

checkered career. Last year a very large portion of the pineapples were sold sixty or seventy-five per cent. The two previous seasons very few were sold.

Q. How about the fruit?

A. Well, that is consigned and sold both. I wouldn't like to make an estimate of the amount sold F. O. B. It is handled in different ways, but I would say about fifty per cent of it is sold F. O. B. and about that much consigned.

MR. NEEDHAM: I don't think your Honor that this line of testimony has very much to do with the question of the freight rate because it makes no difference who pays the freight with reference to whether it is reasonable or not.

MR. ABRAMS: I offer in evidence this statement of the rate of fruit and vegetables.

Q. Now, Mr. Kirtland, have you made a statement showing the rate on citrus fruit and vegetables on the west side of the Peninsula?

A. From what point?

Q. Say from the extreme southern point.

A. Yes, sir, I have.

MR. NEEDHAM: Now, I object to this testimony perhaps I don't understand just why it is interviewed. The rates here especially they are fixed by the Commission and are fixed on a distance basis.

(After informal argument.)

MR. ABRAMS: I am going to withdraw it if your Honor please for the present, I find I haven't got it completed.

Q. Mr. Kirtland, you made the reduction in 1907 and 1910 of your own volition, did you not, the Company did?

A. Yes, sir.

Q. Did you present that to the State Railroad Commission?

A. No, we presented them to Mr. Prouty.

Q. And did the State Railroad Commission—Did you ever put in those rates to the State Railroad Commission?

A. No, these particular freight and vegetable rates, we first submitted those to Mr. Prouty, and then later submitted them to the Florida Railroad Commission a reduced tariff of merchandise in which these rates were included in the fall of 1910. These rates we submitted along with the reduced tariff on merchandise and everything including these.

Q. Well, did the State Railroad Commission approve these rate reductions?

MR. NEEDHAM: I object to that question.

THE COURT: Let him answer the question.

A. Yes, sir, they did. They approved the tariff, except they permitted us to charge locally in the State on pineapples the same rate we were charging on oranges. They did not require us locally to accept those reduced rates on pineapples.

Q. Now, you say there were reductions on other classes of freight?

A. Yes, sir, on all classes of merchandise.

Q. You say you submitted those rates to Mr. Prouty?

A. Yes, sir.

Q. When?

MR. NEEDHAM: Well, I object to that, I don't see just what bearing that has that that statement or proposition to reduce rates was submitted to one of the Commissioners.

THE COURT: No, I don't see how that would be material.

Q. I will put this question to you now, Mr. Kirtland, on the question of these rates from your knowledge of the condition existing and the business of vegetables and pineapples, state to the Court whether or not the rates fixed by the Interstate Commerce Commission you are now contesting is such a rate as the Company could put in and hope for any reasonable returns therefrom.

MR. NEEDHAM: I object to the question. I object to its form and I object to the substance.

THE COURT: I think he can answer it. It is in-

definite of course in this, that is, does not carry any definition of what is reasonable returns. Let him answer.

A. Well, I think the loss in revenue that we would suffer by those rates being put into effect, it would certainly reduce our revenue to such an extent that it is doubtful whether we would have any revenue left.

Q. From that commodity?

A. Yes. I think those rates are wrong for other reasons as compared with other commodities we handle. They are discriminatory in connection with other things that we handle. For instance, you take the question of oranges. The rates they have ordered in on oranges from Miami would give to us about seventy-five dollars a car from Miami to Jacksonville. Now, you take the other things we handle, take a car of grain. It is on the carrying rate of thirty thousand pounds, which is below the average, decidedly below the average. You take canned goods. It pays a hundred and forty-four dollars. You take flour, it pays a hundred and eight dollars. You take beer, twenty-five thousand pounds that is a standard load. It is a hundred and forty dollars. You take turpentine, forty thousand pounds an average load, it pays a hundred and thirty-six dollars. Packing House product thirty thousand pounds, it pays a hundred and twenty-six dollars; machinery for forty thousand pounds, you pay ninety-two dollars, and you take, say, fertilizers, the lowest class of commodities we have, coal, and such as that, would be thirty-six dollars, so that if you will compare the rate they have ordered in on oranges as compared with the staples, absolute staples that we handle you will find that it is materially lower per car than we are ordered to put in on a luxury and a highly perishable commodity. That is one of the main reasons why I think these rates are wrong. They are wrong, they are discriminatory as compared with other commodities that we are handling.

Q. Non-perishables?

A. Non-perishables, dead freight, staples and such things we handle. Corn, flour, everything we handle, everything of that kind pays more than these rates would pay.

Q. And not perishable, either?

A. They are dead freight. And perishable commodities are supposed to carry a higher grade of cost because they are luxuries. They require extraordinary movement. They are moved in a very short time. Everything has to be considered to do that, to get it off without damage, and in addition to that there is not as much claim for dead freight. You take perishable commodities our claims last month amounted to two hundred and seventy thousand dollars, and figure out what a percentage of our earnings that was.

Q. Mr. Kirtland, do you know the railroad line from Homestead to Key West?

A. I do.

Q. Have you ever been upon the different coasts?

A. I have been on all of it.

Q. Do you know the nature of the soil, at Lauderdale to Homestead?

A. Yes.

Q. Been over it personally?

A. Every foot of it.

Q. State to the Court what difference there is if any between the character of the soil between Miami and Homestead or between Homestead and those keys and on those keys.

MR. NEEDHAM: One moment, I want to enter a general objection to the line of testimony with reference to the condition of the soil. If he has anything to follow that up by showing the traffic, why that is another thing, but as to what these keys may produce in the future has no bearing upon the present condition of the movement of freight. It has a bearing possibly upon what the future may bring to this extension.

THE COURT: Well, that is a question that you will have to argue to the whole Court. I will admit the testimony over the objection.

A. There is very little soil, it is all rocks. It is a limestone formation and the rocks on the keys seems to have for some reason consistently and in a great many respects is like the rocks around Miami, only that on the keys you can raise anything. I have seen growing there all over pineapples, oranges, grapefruit, limes, anything in fact that can be grown in a tropical country.

THE COURT: Q. Have you got a top soil or do you make a hole in the rocks?

A. You make a hole in the rocks and fill it up with a little soil, and the fibrous root seems to grow right through it. Now, before the road was built down there that was at one time the pineapple industry on Key Largo was a very large industry, they shipped by steamers by Key West, and when the road was built to Miami they would ship by steamers to Miami and take the railroad. A lot of the plants used on Indian River were brought from Key Largo, but the pineapple business seems to have died out there because of the fact that the business was gone into on such a large scale in Cuba and up on the Indian River where we had many advantages that it seems to have relinquished. Now, the lime business down there is quite a large industry. I have not known them for years to sell for less than six dollars a barrel and I have seen them sell up as high as sixteen dollars a barrel. They would plant about two hundred and ten of those trees to the acre and the "Conk" down there they all tell me they will average about three barrels to the tree and they don't use a pound of fertilizer, they don't use any fertilizer at all. There is something in it down there that seems to fertilize them. That is not true all around Miami. You have got to fertilize that, and the only thing that stands in the way of development on the keys is the lack of people. They can grow anything

on earth. They have the advantage of Cuba on pineapples. They have sixteen cents more on duty and the lemon of course being related to the lime is better there than any place in the world. There is no reason in the world why the keys cannot be made profitable after the people come in there. You can grow anything in the world you want there just as well and better than you can around Miami in that section.

Thereupon at twelve o'clock and thirty minutes P. M. Court was adjourned until two o'clock P. M.

Thereupon at two o'clock P. M. Court convened pursuant to adjournment.

Thereupon the witness, Mr. Kirtland, was recalled and having been previously sworn, testified as follows:

MR. KIRTLAND.

Cross-examination.

MR. ESTERLINE: Q. Mr. Kirtland, in taking up the matter of cars from the Armour Car Line, who furnished the refrigerator cars and the companies who furnished the ventilated box cars, I understood you to say those cars were leased by the Florida East Coast Railway Company on the basis of three-quarters of a cent mileage from the Armour Car Line?

A. Yes, sir.

Q. Now, how and on what terms as to the time of service to be engaged in those cars?

A. There is no specification as to time they will be on the road. We contract with them to furnish us a thousand cars per annum.

Q. But if I understand you correctly there is no specification as to the number of days they will be out on the road on our line?

A. We pay for those cars on a mileage basis.

Q. How do you order those cars, as you need them when the season is on?

A. We make up an estimate prior to the movements as to what our requirements will be and we have to give them a requisition approximately thirty days ahead of time as to the number of cars we will need each week, and, of course, that is subject to fluctuation as the occasion demands and as the condition develops.

Q. After you give them the notice according to your demand, then they arrange to furnish the cars?

A. They arrange to have them sent south. They are scattered all through the north and they send them south so as to get here at the time of the demand, but it frequently happens that we don't get all we order.

Q. Well, you do the best you can on that?

A. Yes, sir, we do the best we can.

Q. Sometimes you may not be right in your own judgment as to the number needed and sometimes they are a little late in coming, but you throw it together and do the best you can?

A. We work together and do the best we can. We have had cases this winter where we ordered seventy-five cars a week and would not get a car.

Q. Well, now you know why that was?

A. Well, it would be due to various causes. There would be a movement on some other line throughout the country, or bad weather condition which kept the roads tied up and then the demand from other lines and other supplies might run short.

Q. Now, this three-quarters of a cent a mile, not only paid by your Company but any of the connections over which the cars travel, that causes a division of the freight charges, that is true? That fact is true?

A. I don't know what other contracts with the other roads are, but I understand it is the same.

Q. What I mean is, when you ship a car over your line to New York, the three-quarters of a cent a

mile from your line to New York is not paid exclusively by your Company?

A. We only pay for the distance traveled on our own line.

Q. And the distance traveled on the other line is paid for by the other Company?

A. Yes, sir.

Q. So that your expenditure in that regard is limited to your own line?

A. Absolutely, yes.

Q. Now, you spoke about there being trouble at times with the Seaboard Air Line and the Atlantic Coast Line and the Southern as to the ventilated cars did you not?

A. Yes.

Q. What is that trouble, you made some suggestion in connection with it about fertilizer cars.

A. Well, it is due to the demand they have upon them for the movement of traffic originating on their own line. The principal trouble that we have had throughout March and April is the heavy demand they have made on them for the movement of fertilizers. We encounter some trouble in June when we want equipment to move the pineapples, and they have large watermelon movements out of Florida, and it frequently occurs, for instance we will call on the Coast Line for fifty cars a day and it will run for a week or ten days that we won't get a car. It so happens that they are moving on their own line and we will get nothing from them to fill up. There is always that uncertainty, we have no assurance, we have no contract with them. We are merely on their grade. If they have no demand for the car why, of course, they will let us have it.

Q. Don't they get a part of that haul when they furnish those cars?

A. Yes, get a part of the car.

Q. Isn't it to their own interest?

A. Oh, yes, it is to their interest all right.

Q. So that they don't withhold them for any other

purpose other than they are unable to furnish them?

A. That is all.

Q. And being unable to furnish them is against their own interest as much as yours?

A. Yes, sir, that is it. They want to furnish them but their first obligation is to their own shippers.

Q. Now, I am not quite clear in my mind what you mean by fertilizer cars in heavy movements of fertilizers, what has that to do with the movement of fruits and vegetables?

A. Well, it has this direct bearing on it. Suppose tomatoes are moved from Miami and fertilizer is moved from Savannah or Charleston, you know the movement of fertilizer out of that section is something enormous. Those lines have no other class of equipment except these ventilated cars. They use it for loading fertilizer and they also use it for fruit and vegetables. When they are called on at Charleston to furnish two hundred cars a day for fertilizer and all along the road they have probably got demand for fertilizer loading six or seven hundred cars a day.

Q. They don't have to haul fertilizer in ventilated cars?

A. They haul it in those cars, that is the only kind of equipment they have.

Q. They have no other equipment than the ventilated cars?

A. Not box cars.

Q. They haul fertilizers and fruits and vegetables in the same kind of cars?

A. Yes, sir, you see these cars have great big openings, a great big open ventilation on the two sides and at the ends. You see as soon as the car is opened up to ship fertilizers, and after it is unloaded after a day or so the car is allright.

Q. Now, from the beginning of the fruit and vegetable section down south until now you have depended upon your connections and the Armour Car Line to furnish all your supply of cars?

A. Yes, sir.

Q. And as to this new equipment of your Company you have made no definite plan for that beyond the estimate have you?

A. No, sir, we never have.

Q. You have made no contracts?

A. No, sir.

Q. And so far as you know for the present or for a while yet you will continue to handle it in the same way that you have done?

A. We will for this season.

Q. And you don't know what you may do by the next season?

A. It depends on what we get at this season.

Q. Now, the same applies as to these sidetracks, that is if your equipment, you require nothing of that kind for the cars you get from Armour and your connecting line, your Company looks after their own cars and you are not concerned about trying to care for the keeping of the others?

A. No, sir.

Q. You said in speaking of the consolidating of the cars at Jacksonville.

A. Our Agent consolidates the cars.

Q. Is that your agent at the station, or somebody who you employ outside of that?

A. He is our regular agent.

Q. Now taking up the side track facilities, you say in the pineapple country the soil consists of sand and you can't haul the freight by team, hence you built railroad tracks into the pineapple fields?

A. No, I didn't say that.

Q. Well, will you please state that for me.

A. Well, we put in what we call loading tracks alongside of the main line, and they build along side of this loading track a packing house and they bring the pineapples from the field on a little wooden tram which they construct themselves and they bring the pineapples up to this packing house which is situated alongside of the loading track which we have put in.

Q. That packing house is the packing house of the pineapple man?

A. Yes.

Q. When he provides the little tramway of which you speak and puts in the plant, that dispenses with the equipment on your part and provides him with the loading facilities which you otherwise would have to provide if he hauled it all the way from the field to the station.

A. What kind of facilities do you mean we would be required to furnish, I don't understand what you mean by facilities.

A. What would be required to be furnished?

Q. Freight houses.

A. You understand these car load shipments have to be loaded by the tariff by the shipper. We would not have to furnish freight houses to load car load shipments.

Q. You may load it on the steam track?

A. Yes.

Q. Is that the way it is done now?

A. Yes, sir.

Q. What I am getting at, what are these seven tracks you built in the space of four miles? I understood they were out in the fields. I must be wrong about that.

A. You are wrong about it. It is alongside of the main line and these little spur lines are put in alongside of the spur tracks and the grower will erect a packing house, you understand.

Q. Yes.

A. Now, a pineapple field will be adjoining this packing house, back of it or side of it, and he will construct a little wooden tram with an open car through his pineapple field and the men will go through the field and break pineapples and fetch it to another man who will put it in a little tram car and it is loaded from the packing house into the freight car.

Q. You put your freight car up side of the packing house?

A. Yes, sir.

Q. And if he hauled it in without the use of the packing house he would load it from the wagon to the car?

A. Into the car. So we are furnishing the same facilities. It wouldn't save us any facilities by his putting a packing house, or his building a packing house.

Q. Then you would have to build a team track, you would have to have team tracks?

A. Where, please?

Q. Well, you would have to have at your place if he didn't have the packing plant a little spur, and then you would have to have at your station a track for him to put them.

A. Certainly, we would have to provide a loading track. Of course the question of how close these loading tracks would be put together is a matter of policy as much as a matter of practice. It has been the policy to put these tracks together as much as possible to save the expense of hauling.

Q. Now, then, when you put in the spur at which he put the packing plant and brings the stuff in by the tram, that dispenses with your building a team track, does it not?

A. It was put in for the purpose of his dispensing with the expense.

Q. But doesn't it dispense with the team track?

A. I don't see that it dispenses with anything. It simply adds to the number of loading tracks making us stop a very short distance together and a little more expense in getting the train over the road.

Q. Isn't that a good thing for the Company?

A. I presume they figured it to be a good thing because every cent they save to the grower naturally helps the railroad to that extent.

Q. And, further, if you didn't have the spur and the packing house and the tram, you would still have to put up a team track for him to go and load from his wagon to your car?

A. Yes, sir.

Q. So that the one dispenses with the other, that is about what it amounts to, doesn't it?

A. One dispenses with the other?

Q. If you don't have one you don't have to have the other.

A. I don't see that there is but one to it at all. We have to furnish a track for him to load. The point which I meant to convey to you is this: That instead of having these tracks widely separated as they are in most sections of the country, instead of having them three or five miles apart, we have put them close together in order to save to the grower a very heavy expense of hauling to the railroad.

Q. Now, is it not a fact that those tracks being close together, seven tracks in four miles, is a great advantage to the Company in going to make up the trains?

A. Absolutely none, it is just the reverse; every time you put a track in you reduce your hazard. Every time you have to stop your train you are losing time and burning up your fuel. It is a direct expense to us in putting in these tracks, as close as we are, these spurs.

Q. You do it to facilitate the grower, it is no advantage to the Company?

A. Yes, we believe it pays us because every time we do anything to save an expense to the grower we are helping him to profit in business, and as a friend of mine once said, "If the farmer gets it, we will eventually get it."

Q. So it helps you all?

A. Indirectly and remotely we will finally get it.

Q. At these packing house plants, the packer and the conductor handle all the business with regard to the outgoing freight, instead of being handled by an agent at the station?

A. Well, there is no difference at all, absolutely none.

Q. Assuming that these side tracks and spurs

which you have put in for the advantage of the shipper and the grower were not in there, they would bring this freight to the station, would they not?

A. Yes, sir.

Q. And there the station agent would have to handle it?

A. No, sir.

Q. Who would?

A. The shipper.

Q. Do it all himself, who attends to the billing?

A. The agent would sign these bills of lading, but at these packing plants which we are speaking of there is no agent. The conductor is our agent and signs the bill. In one case the agent would sign it and in another case the conductor would sign it.

Q. Yes, but several conductors could so readily sign bills of ladings originating at several points, showing shipments than one agent could sign and look after a vast volume of business originating at one point could they not, and it would require extra and additional help with the agent at the station if he had it all to handle?

A. You say several conductors can handle it?

Q. Yes. (Addressing the reporter.) Read the question again.

(Question read to the witness.)

That is perfectly clear, is it not?

A. Absolutely not, I don't understand what you mean.

Q. Well, I will illustrate it. Take the seven miles of track, or the seven tracks within four miles, there are seven packing houses at these seven tracks and the freight is delivered by the various growers?

A. Yes.

Q. And the train coming along, one conductor on the train makes the consignment of the freight at two of those and another conductor at two more, the third conductor and so on.

A. Yes, but that is not the way we handle it.

Q. How is it handled?

A. It is handled by one conductor, one conductor signs the bills of ladings?

Q. All of them.

A. Yes, sir, at the particular point where he stops to get the freight.

Q. Does that one conductor also sign the bills of ladings at the station?

A. No, sir, he does not.

Q. That is all the signing he has to do?

A. For those cars he receives at the station where there is no agent.

Q. And if he didn't do that the agent would have that in addition to his own work.

A. And he could do it without engaging any other help.

Q. And without any increase in his salary and all that?

A. Yes, sir.

Q. Now, how many cars go out of there in a single day, take that place where you have seven tracks within four miles?

A. I should say that in the heavy shipping season, probably in that particular location it would average about ten or twelve cars a day.

Q. Now, Mr. Kirtland, please name as you can recall them, what are the various vegetables that grow on the line, starting we will say with tomatoes and I think potatoes, name some of them.

A. You mean name those which are grown or those which can be grown?

Q. Both; well, which are grown. We will deal with those which are in existence and not what may have been.

A. Well, we grow tomatoes, egg plants, peppers, snap beans, english beans, strawberries, potatoes, squash, cucumbers. You want all over the line now?

Q. Yes.

A. Lettuce, celery, early corn, cabbage, onions. There may be some few more grown besides that.

Q. I understood you to say that these tomatoes,

these vegetables took a lower freight rate, and that the rates described by the Commission were unreasonable, were unreasonably low, as compared with other commodities, staple commodities, and your basis to that opinion was that they were luxuries.

A. Yes, sir.

Q. Do you consider tomatoes as a luxury?

A. At the time of the season they are produced here they are a great luxury.

Q. And Irish potatoes?

A. Yes, sir.

Q. Cabbage?

A. At the season produced—

Q. Well, when they are consumed.

A. When they are consumed they are luxuries and are paid for as luxuries.

Q. I understood you to say some of them were sent to Seattle?

A. They are, and from there shipped to Alaska, and then you think they would be luxuries in Alaska don't you?

Q. It might be in Alaska but I don't know how it would be in the congested district of Chicago.

A. They don't go in the congested districts of Chicago?

Q. All I want to know is the fact if that is the basis of your opinion why they should take a higher rate is because they are luxuries.

A. I said they were luxuries and they are highly perishable and they demand quicker service. Those were the three reasons.

Q. Well, they don't take any more service than the packing house product which you have named?

A. Yes, they are superior service and more expensive service.

Q. What was that figure you gave about freight claim for the handling of perishable traffic last season covering about five weeks' movement amounted to two hundred and seventy-five thousand dollars. Those were the claims filed?

A. Yes.

Q. Wasn't some of those claims based on the date in handling for failure to move out the freight?

A. That was supposed to be the basis of all of them?

Q. For failure of the Company to handle them?

A. Delay in transportation, yes, sir.

Cross-examination.

MR. NEEDHAM: Q. It is not an unusual thing at all for railroads demanding special equipment for special periods of time, or short periods of time, to rent from the companies that own and furnish special equipment, is it?

A. Well, it is unusual with us, Doctor.

Q. I didn't ask—

A. You asked me about the practice of other roads?

Q. I asked you the general question. (Read the question.) (Question read to the witness.)

A. Are you speaking of our railroad or other railroads?

Q. I am speaking generally.

A. I can only speak for our road; I can tell you what has been our experience.

Q. You have already stated that you rented cars.

A. Yes, sir, but you asked if it was unusual.

Q. These car companies are organized expressly to manufacture and purchase and furnish to railroads special facilities for the use of, facilities for a short period of time?

A. Yes, sir.

Q. And they move it from one part of the country to the other.

A. Yes, sir.

Q. So that their cars are kept in use practically during the whole of the year in some part of the country?

A. Yes, sir.

Q. Whereas, if they were owned by a single railroad they would, as you have already stated, be used only perhaps two or three months out of the year, and have to be stored the rest of the time, is that right?

A. Well, you want me to give you my opinion of the condition of other roads?

Q. No, I don't want any opinion. I want to know if that is not a fact?

A. I will tell you what the fact is on our road.

Q. State those facts, they are what we want.

A. I probably don't understand the question, I understand that to be true, but I will tell you for fifteen years we have handled our business without the use of these Armour cars, of this Armour Car Line. We furnish the double-lined ventilated cars and the Armour people sent an agent down to our country and talked up a purchase of their car and that the people were asking for them and demanding them, claiming it was a superior car, making the demand on us so extensive that we made a contract with them at an expense to us at fully double what the felt-lined cars would cost us. Now, you see it has not always been the case with us, it is due to this private car line being advertised by their own Company which has made the demand of the shipper for a special kind of car, which in our judgment is not necessary for the proper protection of fruit. We handled it for fifteen years without having a claim, but since they have been educated to think it is better they want the best where it don't cost anything. They have come to want this car every year and the use of it is becoming more universal.

Q. Unless you educate your people to accept the other type of car you must then rent from the Armour or else you must manufacture the same kind of car?

A. Yes, sir.

Q. All I wanted to know was whether or not these cars owned by the car companies are not rented by many railroads besides yourself.

A. They are. It is my understanding.

Q. Then, it is nothing unusual?

A. Nothing unusual about it, all the roads do it.

Q. You stated that there had been a large increase in the proportion of car loads or less than car loads on your line in the last two years, how would that compare during the time that you have been connected with the Company, has there been a steady increase in the proportion of car loads as compared with less than car loads?

A. Well, I can say that the tendency always has been toward the larger movement of car load lots. For instance, a few years ago a great deal of this stuff was shipped by express. You take peppers and eggplants and most truck, and they are drifting into the consolidation of the various kinds. We put in a rate permitting consolidation and then they began to consolidate and ship by freight rather than express on account of saving, and now they are getting into a further movement of consolidating car business. They are taking such highly perishable stuff, such as peppers and those things, and snap beans, which are very tender and which have always gone by express rather than by freight and last year they made their first movement by freight. Made their first movement by freight last year and now they are moving by car load lots for better service and getting the stuff in the market in better condition.

Q. There was a time when all this freight was gathered at Jacksonville and there put into car lots, say in car lots as distinguished from less than car lots?

A. Well, I don't suppose there was ever a time when it was all done that way.

Q. But a very large portion of it?

A. A larger proportion than at present.

Q. There is comparatively all parts of the shipments that are gathered at Jacksonville and put into the car lots now?

A. There is quite a movement.

Q. What proportion?

A. Well, the statement I gave this morning represented that, of the vegetables I think it showed about thirty-three and a third per cent and oranges more than that.

Q. How much?

A. Now, I have the figures here and I can give it to you exactly. The shipments between forty-four and a fraction and one hundred that would be about fifty-six per cent; 44.1 that would be 45.9.

Q. How would that apply to all citrus fruit?

A. It is all citrus fruit. That is oranges and grapefruit. Wherever I use the word "oranges" I mean citrus fruit.

Q. So that it is true that the increase in car load lots has been steady?

A. Yes, sir.

Q. From year to year?

A. Yes, sir.

Q. Up to the present time?

A. Yes, sir.

Q. You said that the revenue to your Company under the new rate would be seventy-eight dollars a car, from what point?

A. Miami to Jacksonville.

THE COURT: On what freight?

A. Citrus fruit.

Q. How much would that be per ton per mile?

A. I didn't figure that out, I could figure it for you. It would be six dollars and fifty cents a ton. It would be about one and seven-tenths mills a ton a mile.

Q. Do you know what the average per ton mile revenue was on your road last year, did you figure that out?

A. No, but I can give it to you for those same staples. I can figure it for you.

Q. Well, I was asking for the average on all of it.

A. No, I didn't give the average but—

Q. I can get that from your report. Do you know the cost of hauling that car?

A. No, sir, I do not.

Q. Omitting any return upon the capital, what the cost would be for hauling that car?

A. I could not.

Q. Have you an idea at all about it?

A. No, sir.

Q. Can it be ascertained?

A. I don't believe so, I never heard of anybody could tell what it cost to handle freight.

Q. If the per ton mile realized on the car is above the average per ton mile of freight on your line last year, can you say that it was more than the cost of hauling it?

A. Well, I suppose the only way you could say what it cost us to haul would be to take the total tonnage handled and what it cost to handle it, and I would naturally assume that the perishable commodity of this kind handled under the condition that it is handled would be more than the average; that is true of everything and it would not follow because this was above the average we hauled would be fair, not being a fair estimate.

Q. I was not asking you what would be a reasonable rate, I was asking you about hauling it, assuming that it was above the average per ton mile, would say that it was above the cost of hauling it?

A. Certainly not, no, sir, because it cost more than the average freight to haul it.

Q. In what respect?

A. Because it is a high class service, we move only at one season of the year what we have got to make the peculiar and special arrangement for the handling of the freight. You take the general class of freight moving throughout the year where the service is organized where it is going regular all the time, this freight there is no necessity for an expensive service, we handle it on this regular freight. You can leave it until to-morrow if your train is full and you can naturally handle it cheaper than you can these movements.

Q. Does it cost any more to haul a train with this load than it does to haul it with any other load?

A. Why, certainly, Doctor, we have to limit the trains in order to make the speed. You take a train of perishables north bound last winter so we limited those trains to twenty-five cars, and the south bound trains with sixty-five cars, and the load in those cars being heavy freight and the total would run thirty to fifty thousand pounds on paid freight. North bound perishables would only run ten to twelve tons.

Q. That was the basis of making the speed necessary with the perishable freight?

A. Yes, sir. It was necessary because the cost was more than the south bound freight.

Q. Now, can you give us the expense of hauling a train of twenty-five cars?

A. I cannot.

Q. Have you any idea what this expense is?

A. Well, what expense do you mean?

Q. I mean the actual out-of-pocket expenses.

A. Just the actual cost of a train of cars, the average hauling and etc.?

Q. Yes, that is what I will ask you for now.

A. I can't give you that. It could be added I guess. It could be had.

Q. You have averaged the cost?

A. Yes, I have in a way. I have got that information from time to time but I would not qualify as an expert on that because it is not in my department.

Q. Omitting any return upon the capital invested, is there in your opinion any profit in hauling this car at seventy-eight dollars?

A. It would depend on the volume?

Q. What is the volume of traffic over your road?

A. Which year do you speak of?

Q. Any year, I am not particular about that.

A. Well, name the year.

Q. Well, any year you choose during the time that you have been connected with it, of course, and have personal knowledge.

A. Well, I can only answer it this way and say since I have been connected with the road there has never been a time when we have never made operating expenses.

Q. Well, from your experience, would you say that omitting the return upon the capital that there has been a profit in handling this car at seventy-eight dollars?

A. I don't know that I could differentiate on that because there would be so many conditions dependent on that. You assume that the rate on all other commodities would be left where they are?

Q. Oh, no, I am not assuming anything with reference to other commodities, I am taking this particular traffic which you say you received seventy-eight dollars a car. Now, take that traffic into consideration simply, of course, in connection with the fact that you are operating a railroad, and I ask you whether or not there is any profit in the hauling of that traffic at seventy-eight dollars a car?

A. I presume we could take one commodity and cut it in half and it would not operate at a loss, but if you take any other traffic of the road and reduce it proportionately, I say it would be a loss. I say you must not take these cars of highly perishable commodities and base that upon what the staple articles are handled for. You can take any one commodity, oranges or tomatoes, or anything else. I might say we could handle tomatoes at fifty cents a crate and profit above operating expenses, but I could not say whether there would be a profit of seventy-eight dollars a car when singling out this one item because the only tide I have got to go by would be whether the business as a whole is operated at a loss. I could not say whether this particular commodity would be operated at a loss.

Q. Taking the rates that are provided as a whole upon your road, with which you are familiar I assume, is there a profit at hauling this traffic at seventy-eight dollars a car?

A. I would say not.
Q. Not?
A. Yes, sir.
Q. Does it cost you seventy-eight dollars a car to haul that car from Miami to Jacksonville?
A. As I said before, I could not tell you what it cost to haul it.
MR. ABRAMS: If the Court please, I object to the question put that way. The mere expense of hauling does not embrace the entire cost of that car. You have got to take the whole road. Its entire expenses.
THE COURT: Well, I think it is a proper question. I think the witness has a right to explain or qualify in his answer.
MR. ABRAMS: Yes, but the question is he wants to limit him to the cost of one car.
MR. NEEDHAM: Oh, no, I am speaking of this traffic, this particular traffic from Miami to Jacksonville at seventy-eight dollars a car as you haul it from year to year. Now, in connection with your other business, do you mean to say that it would cost you seventy-eight dollars a car to haul that traffic?
A. No, I said, Doctor, that I did not know what it cost us to haul the traffic.
Q. Isn't that a subject that you have made some study of?
A. It is a subject that I have tried to study but I have not been able to find anyone yet that can tell that question.
Q. Do you have anything to do with making the rates on your line? That is your business isn't it?
A. That is what I am paid for.
Q. And as an expert, then, do you say that it is impossible to tell what it cost to carry a single traffic, like fruit and vegetables, over your line?
A. Yes, sir, I do.
Q. And in arriving at the rate you do charge, where you make the rate yourself, you do not undertake to base it upon what is the actual cost of moving it, do you?

A. No, sir, we do not.

Q. You don't take that into consideration?

A. We do take that into consideration in connection with all the other conditions.

Q. And by that you mean all the other traffic?

A. I mean the other traffic, the condition surrounding the movement and we try to take all the circumstances and conditions into consideration and make it a proper rate for that particular commodity.

Q. You endeavor in all cases to make the rate an amount that will make the freight profitable to your railroad?

A. No, sir, we do not.

Q. You do not?

A. We are actuated by a desire to make the rate as low as the earnings will justify.

Q. Well, don't you try to make it profitable to the Company?

A. Not beyond a certain figure.

Q. I didn't say beyond a certain figure. Don't you try to make it profitable to your Company?

A. I try to see that the rates are not lower beyond a certain figure, as will make a loss.

Q. Will you answer this question. Do you try in each case so as to make the rate such as will make the traffic profitable to your Company?

A. Yes, sir, always, certainly.

Q. And in doing that you do take into consideration the rates upon all traffic that you carry, and in arriving at the question of whether the particular rate is just or unjust from your standpoint, you take into consideration the rates that are being paid on all traffic?

A. That is one of the conditions, yes.

Q. And a very important one, is it not?

A. A very important one, yes. We also take into consideration the rate on the same commodities from other shipping sections.

Q. That you compete with or that the traffic competes with?

A. Yes, sir.

Q. What is known as the market competition?

A. Yes, sir.

Q. You have to take that into consideration in order to develop your own territory?

A. Yes, sir. We always have to consider that.

Q. Won't you just state for our information right here what the substances are you consider in fixing a rate for this particular traffic on your own line?

A. Well, you take the pineapple traffic, for instance, one of the important substances that we take into consideration in fixing these rates, is the rates effected from the competition market. And we are at all times trying to get the rates north of Jacksonville reduced, so that we can get as cheap rates for our customers as possible. The rate from Cuba for instance, from the point of production, assuming it is eighty-five cents, and the rate on our line to Chicago having to be ninety cents. The first effort naturally would be to get the line north of Jacksonville to reduce the rate to bring that about. Superior to that we then think it would be a proper step for a reduction of our rate so as to put them on equality.

Q. Well, now, what other things do you consider in fixing those rates?

A. Well, we consider the earnings on that commodity as compared to the earnings on other commodities we handle.

Q. Taken as a whole?

A. Yes, sir, taken as a whole. Well, of course, when we go to fix a rate on one thing we don't absolutely look at everything in the classification, we take the particular commodity that we use.

Q. Well, what else do you consider?

A. Why, I think those are the main reasons, the controlling reasons, of the pineapple rate.

Q. Well, don't you consider whether there would be a probable profit to your Company in the hauling at the rate required to meet the competition and to develop the business?

A. We do take that into consideration in a general way. In a general way we figure that we must not go below a certain figure because it would be at a loss.

Q. How do you arrive at that minimum?

A. Well, it is the old stereotype that everybody uses at half a cent a ton a mile. If you go below that you know the question of rate making has not been reduced to a science.

Q. I want to call your attention to the station that you have referred to south of Miami; how far south of Miami does the main line extend upon which you have stations?

A. Jewfish Creek.

Q. That is the point at the section of Jewfish Creek.

A. Yes, sir.

Q. How far is that below Homestead?

A. That is twenty-one miles south of Homestead?

Q. What is produced in the way of traffic between Homestead and Jewfish?

A. Nothing.

Q. Don't you get any vegetables between Homestead and Jewfish?

A. Oh, you mean Homestead? Yes, there is some vegetables two miles south of Homestead at a place called Detroit.

Q. How far south of Homestead is there any considerable truck farming?

A. Nothing south of this place I have mentioned, Detroit.

Q. You have already stated there is considerable vegetables in the Homestead vicinity; is there anything in fruit?

A. Oh, yes, it is growing very rapidly. Large orchards have been set out and just commenced to bear.

Q. That is rather high land around there isn't it?

A. Well, none of it is high.

Q. Is it what you call ridge land?

A. No, sir, it is under water, part of it.

Q. It is perfectly dry and tillable?

A. Oh, yes, it is tillable.

Q. After you pass Jewfish what is the first Key that you start from?

A. Key Largo.

Q. That is the Key you have referred to?

A. Yes, sir.

Q. What traffic is there now that your road is carrying?

A. Limes principally.

Q. What is the amount of that traffic?

A. Well, we are carrying citrus fruit, limes and all consolidated, we have never separated that.

Q. Well, you have not been operating there very long?

A. No, sir.

Q. How long have you been operating there?

A. I don't remember when we opened that up, possibly in about 1906 I should say, somewhere along there. I am not certain as to the date. In January, 1908.

Q. In January, 1908?

A. Yes, sir.

Q. Is there anything else grown there besides limes?

A. A great deal of stuff is grown. They can grow vegetables.

Q. I am speaking about the present.

A. They are growing those things there, but not marketing them in any large crates.

Q. Well, so far as the limes are concerned, you say there is a very large traffic from that Key?

A. Considerable traffic, yes, sir.

Q. What do you mean by that?

A. Well, without having any figures, I should say that they must have about ten or fifteen thousand barrels.

Q. During that period of time?

A. Yes, sir, during the twelve months.

Q. You say ten or fifteen thousand barrels?

A. I have to figure on that, I couldn't say on general knowledge.

Q. Well, your records of course show what the shipments are from that Key and what they have been during the last twelve months, your records, they will show that.

A. We can get you that information, yes, sir.

Q. I wish you would. What is the next Key from which—

A. I think they call it Matacumbie. That is a Spanish name, I think.

Q. What comes from there?

A. Limes come from there, not as many as there are from Key Largo, yes, sir.

Q. What is the size of that, do you know?

A. It is about—I wouldn't say, I don't know.

Q. What is the next Key, Jewfish?

A. I don't remember these names, Doctor. The only way I can give you the answer is from the map.

Q. Well, that's all right.

A. Jewfish is the next.

Q. Do you know what they get from there?

A. I don't think we get anything from there.

Q. What is next?

A. Long Key.

Q. What do you get from there?

A. Nothing in the way of freight. That is all passengers.

Q. That is a fishing ground where there are a good many camps.

A. Yes, sir, merchandise and everything of that sort.

Q. That is necessary to take care of the people, isn't it?

A. Yes, sir.

Q. I will ask you generally from there to Key West is there any Key from which you derive any freight business?

A. Yes, take that next Key, Grassy Key, quite a number of people living on there. Quite a large fish business shipped from a place called Grayland, by freight and also by express.

Q. Could you give us the amount of that traffic?

A. No, sir, I cannot.

Q. Will you look at the book and furnish us the amount of fish from that Key?

A. Yes sir, I will.

Q. Is there any other traffic besides fish?

A. No, I don't think so. That is all I know about it.

Q. What other one would you say you derived business from?

A. Well, there is Knights Key on which Marathon is located and is quite a city.

Q. How large is Knights Key?

A. There is quite a business there. It has been the headquarters for the construction board for quite a long time. Quite a settlement there.

Q. Outside of your own people?

A. I don't know of anything after that is closed up.

Q. Nobody else there except what your own construction carries?

A. That is all.

Q. Beyond that between there and Key West, is there anything of any importance?

A. No, sir.

Q. From Key West what is the principal traffic, or from Key West over your extension, north bound or south bound?

Q. Both. First north bound, from Key West, what is the traffic?

A. The principal traffic from Key West now is tobacco and cigars.

Q. Can you tell us what that amounts to?

A. Well, we have just opened up in there about a month, it has not been developed yet.

Q. Well, can you tell us what it has developed for the last month?

A. Well, I can, but it has not been developed. You take the cigar business. It is a large business and we are now arranging for the handling of tobacco and cigars. They have always gone by water but the indications are that the factories will ship by freight.

Q. That has not been begun yet?

A. No, sir.

Q. I want to get at the amount of business existing at these Keys. Will you give us the amount of business done for the last month commencing at the time you opened up there?

A. Yes, sir. That is about all the north bound business.

Q. The east bound business, what does that consist of?

A. You are speaking of the business to Key West? Any business moving through Key West?

Q. No, in Key West, that is, locally. Outside of the business of your own construction, of course.

A. Well, Key West is just about the same as any other city in general merchandise; it is packing house product, beer, oil, lots of oil. We have handled I guess eight or ten big tanks of oil, and lumber and merchandise generally.

Q. Is there any vegetable traffic that goes there more than any other city of its size?

A. They are just about the same I think.

Q. Key West has a population of something like twenty-three thousand, hasn't it?

A. Something like that.

Q. Can you tell us what the traffic is from Cuba and Key West and over your rail as it exists to-day?

A. Well, we have no facilities for handling the freight—

Q. Well, I didn't ask you that, I asked you what it is, at all that goes from Cuba to Key West and then over your rail north?

A. It couldn't be, Doctor, without a boat.

Q. I didn't ask you that, I asked you if there is any business.

A. No, sir, there is not.

Q. Is there any business from Key West to Cuba over your extension?

A. There is business going southward, yes. The boats that we now have engaged in the service are for mail and passenger service and they have a limited freight capacity. The freight business by way of Key West into Cuba is by boat, which is all they will hold. We have had to beg the people not to ship that way.

Q. What does that amount to?

A. It amounts to probably an average of six or eight cars a day.

Q. North bound?

A. South bound.

Q. What does it amount to north bound?

A. Well, the only north bound movement that we have heretofore handled is pineapples. On account of the construction work we would not handle any, but the previous season we handled a hundred and fifty-six thousand crates.

Q. Are you handling them now?

A. Not the month now, it begins to move April 15th.

Q. You are preparing for that movement?

A. We are preparing for that movement and have every reason to believe it is going to be fully doubled what it was the last time. In fact, we have arranged for it.

Q. Have you put in your tariff for pineapples from Key West to Jacksonville and to the west?

A. Not to Jacksonville, we have put it in for the west.

Q. To what point?

A. All over the west. The principal points in the west.

Q. To what points do these shipments go?

A. They go to all points, the principal point is Cincinnati and Chicago.

Q. What is the rate from Cincinnati to Key West on pineapples?

A. I haven't the figures here. I did not know that pineapples were to be considered here, but I will say for your information the rate from Key West, plus the water rate from Havana to Key West, is the same rate as that from New Orleans or New York.

Q. That is to say, you met the competition?

A. Yes, sir.

Q. But you can't say what that is?

A. The rate from Havana to Chicago is sixty-six and a half cents a crate, that is the production point.

Q. Well, now how much of that is taken by boat from Havana to Key West?

A. The lighterage three cents and boat fifteen cents, the balance would be the rate from Key West.

Q. What would be the balance from Key West to Chicago?

A. It would be sixty-six and a half cents less eighteen that would be forty-eight and a half cents.

Q. What is the rate from Miami to Chicago on pineapples?

A. I haven't that with me. There is no pineapples shipped from Miami.

Q. Don't you know what it is?

A. No, but I could furnish it to you; I haven't it with me. I will tell you, Miami is not a pineapple shipping point. Jensen is the pineapple shipping point.

Q. From Jensen, what is the pineapple rate from Jensen to Chicago?

A. I can give it to you out of the Commission's decision here. It is all in there. They have shown the reasons for putting in the reduced rates, as to make the same rates from Jensen and points of production in Cuba. The Commission put in these pineapple rates—

Q. I will ask you just to give me the rates, how much is it?

A. It says—

Q. I don't care what it says, just give me the rate, how much is the rate?

A. Well, he says here seventy-four cents upon points in Florida as compared with a through rate of seventy-three and a half cents from points of production in Cuba.

Q. Now, you said the rate from Cuba is how much?

A. I said their revenue is sixty-six and a half.

Q. That is less than stated there, which is seventy-three cents.

A. That is from the point of production.

Q. Where is the point of origination of the sixty-six cent rate that you have referred to?

A. Havana, Cuba.

Q. And what is the rate from Jensen to Chicago?

A. I haven't the rate with me, but the Commission in fixing those pineapple rates say the rate from Jensen to Chicago is seventy-four cents.

Q. Well, is that true to-day?

A. I think so, I don't think there has been any change; I am sure it is true.

Q. You are sure that that is true?

A. Yes, sir.

Q. Then what is the rate from Miami?

A. Well, I don't know but whatever the rate was would be a paper rate because Miami is not a pineapple shipping section at all.

Q. Don't you get any pineapples at all from Miami?

A. Oh, a few.

Q. Didn't you use to get quite a good many from that section?

A. Yes, but they were brought there by boat from Key Largo.

Q. Well, are they raised at Key Largo now?

A. No, sir, they have gone out of business at Key Largo.

Q. When did they go out of business?

A. Oh, it has been several years.

Q. Well, what year?

A. I don't remember the year.

Q. Wasn't it the year you commenced taking the Cuban pineapple into the market?

A. Before that.
Q. At less cost?
A. That had nothing to do with it.
Q. Isn't that a fact?
A. No, it is not a fact.
Q. You testify it is not a fact?
A. Yes, sir, I testify it is not a fact. We carry the Cuban mines at the same rate they had always been carried by the Ward Line and the Morgan Line; they went by the railroad instead of out in the sea. Our carrying them did not affect the growers at Key Largo or on the main land either. I have checked that rate from Jensen, it is seventy-four dollars a car.
Q. You are able to state that from your own recollection now, are you?
A. Yes, sir.
Q. The rate then that you are giving to the Key West pineapple over your extension, and the main line to the west is less than you charge from the pineapple districts of Florida, the same points of destination.
A. Yes, sir.
Q. How much?
A. The difference between forty-eight and a half and seventy-four.
Q. Well, do you consider that you are making a profit on the Cuban business at that rate?
A. We are hoping we might get a sufficient volume of business to reduce our local rates.
Q. I didn't ask you that. I asked you do you consider you are making a profit on the Cuban business?
A. Well, as I said before, there is no way to determine the exact cost, and we don't feel that we are losing anything on the Cuban business. We don't feel that we are losing anything in the actual cost of handling the train.
Q. No, but you said in fixing rates you considered one question as one element, whether it was profitable to your road to carry the freight, didn't you?

A. Yes, sir.

Q. Well, now I ask you the same question, do you consider that there is a profit to your road in carrying the Cuban pineapples at the rates fixed?

A. We consider there is no loss on the one item of transportation, but other charges are fixed any way, and we are going to have to pay them. We are not carrying those Cuban pines for less than one item of transportation.

Q. Well, can you answer the question, do you consider it profitable to your road to carry that traffic, and to get it?

A. Well, the fact that we are getting it would be evidence I think that we consider it good business, and we are hoping to build up—

Q. Do you consider it good business?

A. You have got to crawl before you can walk. We have got to get identified into Cuba. This road was built to get the Cuban traffic. The volume is there, of such enormous magnitude than when we do get the proper share that rightly belongs to us we will be in position to have our business for the year round instead of two months' business. We can then handle all our traffic. We can't take one little thing and say, that that is a profit or that that is a loss, we have got to approach the thing as a whole. We don't consider we are handling those Cuban pines at less than the actual cost of running the train, but if we had to handle all of the pineapples for Florida at the same rate for what we got the Cuban pines, if we had to do that we would have to go back into swaddling clothes. Take the P. & O. Company, they take four mills a ton a mile. You see we have got to crawl before we can walk. You take one item out of Cuba, for molasses—

Q. Let us stick to the pineapples.

A. I will tell you something about molasses that is very interesting.

Q. You don't expect by the development of the Cuban business that you will ever get to carry the

pines at more than they are carried by competitors, do you?

A. We do, yes, sir.

Q. For what reason?

A. Superior service; putting them into the market in better condition. We know that our service will be worth at least fifteen cents a crate more than the service they are now getting. After we are established and can demonstrate that fact, we are going to charge a differential for the superior service. At that time we will be able to make a profit on the business.

Q. Are you referring to the time when you will carry the cars across by the ferry?

A. When I say fifteen cents, I refer to the ferry service. But we believe the present service is far superior to what they are getting, but we have not been able to convince them because we have not had enough business, but we are hoping this season to get enough to demonstrate to them the superiority of the service.

Q. Well, the superiority consists in shorter water haul?

A. Yes, sir.

Q. As affecting the pineapple itself?

A. Yes, sir. The pineapple ripens very quickly when it is put into the hold of the vessel, where air and ventilation is excluded, and sweat sets in and rot begins. To show you how important this is in handling this stuff, the rate by the Clyde Line from Jacksonville to New York is thirty-six cents and by rail it is forty-seven and a half cents, a difference of eleven and a half. Notwithstanding that difference of eleven and a half cents in favor of the Clyde Line, all of the movement goes by rail, because the shippers have found—

Q. You are speaking of the Clyde Line from Jacksonville to New York?

A. Yes, but the same thing exists if they put the pineapples in the hold of the vessel in Havana and

ship them to Key West. We can put them in the west in a very much better condition with a great deal less decay than could possibly be by the way of New Orleans or Mobile, and as soon as we can handle some of the business and let them see it—instead of trying to convince them we will have to show them and we will get the business, and we will expect to get it.

Q. What is the differential between the water route and the rail route on pineapples between Jacksonville and New York?

A. Eleven and a half cents in favor of the water.

Q. The water is that much less than the railroad?

A. Yes, sir.

Q. Can you state what percentage of the traffic is by water as against the railroad from Jacksonville to New York?

A. You mean the freight traffic?

Q. In pineapples.

A. Oh, it is practically all rail movement.

Q. Very little goes by water with that differential of eleven and a half cents?

A. Yes, sir, very little.

Q. Can you state how much of it is?

A. I should say ninety per cent goes by rail, easy.

Q. Now, going back to Cuba, your expectation is then that with the differential of fifteen cents, when you get your car and ferry service in, that that will give you a proportion, a large proportion of the traffic from Cuba at a differential of fifteen cents?

A. Yes, we think it will give us all.

MR. ABRAMS: Q. You will charge fifteen cents more than the present rate?

A. Yes, sir.

Q. The present rate is—

A. Seventy-three and a half cents from point of production.

Q. And from Havana?

A. Havana sixty-six and a half.

Q. Now, I want to ask you with reference to other

business that comes to you from Cuba at Key West, what is that principally?

A. Well, there is going to be—

Q. I didn't ask you what is going to be.

A. As I say, we have had no business to handle.

Q. The steamship companies carry it by boat, doesn't it?

A. No, sir.

Q. Didn't you use to receive at Knights Key some traffic that was by boat?

A. No, sir.

THE COURT: No traffic brought there at all?

A. Not at present we have had no freight facilities, the boats are not able to carry them. Those things all go to New Orleans. We have not tried to handle it. We have never had a representative because we had no freight facilities.

THE COURT: Q. Enormous quantities of business going out of Havana goes by New Orleans, does it?

A. Well, goes to New Orleans and some to New York.

Q. Your traffic then with Cuba up to the present time has been principally the passenger traffic?

A. Yes, sir, for the reason we didn't have any facilities to handle freight.

Q. At what time was the Cutler Extension open to Homestead?

A. I don't know, I was not with the road at that time.

Q. When was it opened at Knights Key?

A. January 1, 1908.

Q. At that time the boat landings were changed from Miami to Knights Key?

A. Yes, sir.

Q. Can you tell what the effect was upon your passenger traffic?

A. I am not informed as to the passenger traffic.

Q. You have nothing to do with that?

A. I have nothing to do with that.

(That's all.)

Cross-examination.

MR. BOGGS: Q. Mr. Kirtland, do you believe from your knowledge of the conditions in Florida and Cuba that the producers along your line in Florida will find a market in Cuba advancing any greater amount in Cuba than they produce?

A. I do not.

Q. What is your road division on Cuban pineapples for the haul from Key West to Jacksonville?

A. I don't remember.

Q. Can you find that out?

A. Yes, I could.

Q. Will you give us that information?

A. Not unless I am instructed to do so because I don't understand the division of the rates is the proper subject of inquiry here. This rate is not under investigation and any division of that rate, it don't make any difference to the shipper how that rate is divided.

MR. BOGGS: May it please the Court—

MR. NEEDHAM: I think that is a perfectly proper question.

THE WITNESS: I will say this, that the division is different to every point in the United States. You will have to specify from what points you want it.

Q. Well, give us Chicago. Will you take your division of shipments down destined to Chicago to Cincinnati, and Kansas City and Pittsburgh?

A. Well, now, am I required to furnish that?

MR. ABRAMS: Oh, yes, go ahead, we don't care, we understand what his question means, go ahead and furnish it.

Q. Mr. Kirtland, could you give us the amount of citrus fruit shipped from Key Largo over your line?

A. I cannot, but I have been requested to furnish that and I am going to furnish it.

Q. Is it not a fact, Mr. Kirtland, that off your

line these fruits and vegetables are staple commodities from the transportation points of view?

A. What do you mean by staple?

Q. Well, they are staple commodities in the sense that they form a very large if not the largest part of the freight traffic of your line?

A. North bound or south bound?

Q. Well, take your traffic, that forms a very large factor in your traffic, does it not?

A. They do form a very large part of our traffic. The records speak for themselves on that.

Q. And they are therefore put in commodity rate are they not on account of the volume of the business?

A. They are put into the commodity rate, I don't know that it is on account of the volume but they are package rates to distinguish from a class rate. A class rate would be several times as high as the rate we have in effect, but in fixing a commodity rate they were taken out of the class and given a special commodity rate of so much per package, and not so much per hundred pounds.

Q. Whereas, flour and these other articles you mentioned here are in the class rates are they not?

A. Yes, they are in the class rates.

Q. Now, you said that the rates from competing territories were taken into consideration by you in fixing the railroad rate for this transportation. Is it not a fact Mr. Kirtland that the rate on vegetables from southeastern Texas and elsewhere from Mississippi are very much cheaper per ton per mile than the rates that are in effect in Florida?

A. On what vegetables?

Q. Tomatoes.

A. What vegetables are you talking about?

Q. Tomatoes.

A. From what point?

Q. Well, say Crystal Springs, Mississippi.

A. They start shipping as a rule the 25th of May

out of Florida. We don't take Crystal Springs into consideration because they are not a competitor.

Q. If the rate from Florida was as cheap as the rate from Crystal Springs—is there any reason why Florida could not ship or give as low as it is?

A. Yes, sir, there are many reasons, climatic principally, you know as well as I that the month of May is extremely hazardous, subject to heavy rains and followed by hot weather which will blister them up, and they are scaled and unfit for shipment.

Q. Is it not a fact that toward the northern end of your line there is a territory which did formerly ship in the latter part of May and that they had to give it up on account of pressure by the Crystal Springs competition?

A. Well, what territory?

Q. Well, the territory around Daytona and New Smyrna.

A. I don't recall they have ever grown a tomato.

Q. They have grown some.

A. In my recollection of the road.

Q. You have been here four years?

A. I have been in the State, yes, sir.

MR. ABRAMS: Q. Tomatoes shipped from that country since the big freeze of 1894?

MR. BOGGS: I think so, sir.

Q. Now, how about Brownsville, Texas?

A. On what commodity?

Q. On tomatoes?

A. How many tomatoes do Brownsville ship?

Q. I am not on the witness stand.

A. I will say for your information that Brownsville didn't ship a tomato and will not ship a tomato.

Q. Well, there are points in southeastern Texas that ship tomatoes.

A. Well, name the commodity and I will give you the answer.

Q. Well, could you give me these rates from Texas which I understand generally to cover a large territory?

A. What do you mean by those rates?
Q. The rates on tomatoes.
A. From where?
Q. From southeastern Texas points.
A. From what point shipping to what point? We deal with facts and not with theories.

THE COURT: Now, you answer his question. Those question are perfectly proper. If they are not specific you ask him and he will specify. He is within the province of his duty and it is your duty to answer the questions.

MR. ABRAMS: But Texas, if your Honor please, is an enormous State and southeastern Texas may include an enormous territory.

THE COURT: Well, he can answer the question.

Q. Can you name any point in southeastern Texas that ship tomatoes, you say Brownsville does not? Is there any point in southeastern Texas that ship tomatoes?
A. At the time tomatoes are shipped off the Flordia East Coast, not at the time that tomatoes are shipped from off the Florida East Coast, no, sir.
Q. Well, do you know what those rates are and how they compare with the Florida rates?
A. From where Mr. Boggs?
Q. From any points that you are familiar, you are familiar with those points.
A. I have said Mr. Boggs, I don't mean to be in the attitude of trying to do anything improper, but I said I don't know of any place in southeastern Texas that ship tomatoes.
Q. That ship them at all?
A. At the same time we ship them.
Q. Well, when do they begin?
A. I don't know of any that ship at all.
Q. Well, of course, if you had said that before we would have saved time.
A. We only take into consideration the sections that ship at the same time we ship.
Q. Well, now, is it not a fact that California

oranges take a very much lower rate than the Florida oranges?

A. To what point?

Q. Well, from Los Angeles, say to Boston on a per ton per mile basis?

A. Well, I would say that the rate per ton per mile from California to Boston is a lower rate per ton, but the rate from Florida to Boston is less.

Q. Is it not a fact before the Interstate Commerce Commission made this order the growers of Florida were charged a higher rate from Miami, Florida, to Boston than from California to Florida?

A. I don't recall the figures, I would not say yes or no to that because I don't recall the figures.

Q. In speaking of the empties that your road had to carry in connection with the average traffic, it is a fact that you have a great many empties to carry in connection with your south bound traffic in other articles, is it not?

A. Yes, sir, that is true.

Q. That is, cars have to go back empty, too?

A. Yes, sir.

Q. Is it not a fact that most of this vegetable business is a through business, a car load vegetable business?

A. You mean to points outside of the State?

Q. And beyond your line?

A. Yes, practically all of it.

Q. It is generally known by transportation business that through business is more cheaply handled than local business, is it not?

A. That has not been the basis in Florida with any of the lines, the rates have been the same in Florida always, and on all lines.

Q. That local business is as cheaply handled as through business?

A. Yes, sir, the same figures apply on both interstate and intrastate.

Q. Is it not a fact that you can handle it cheaper on the through basis?

A. I don't see how we could, it has got to come to Jacksonville, it cost us the same to handle it whether it stops at Jacksonville or whether it went on north.

Q. Well, if it stopped at Jacksonville you would have to place cars and the facilities for unloading it there, which is certainly more expensive than to deliver it to the Coast Line, is it not?

A. No, sir, it is not.

Q. Then, you don't agree with the general proposition with regard to Florida business, that through business is more cheaply handled than local?

A. I don't know that I get the meaning of that. As I said a while ago, it cost us the same to handle freight from Miami to Jacksonville whether it stops at Jacksonville or whether it goes to New York, the rate is the same, the service is the same, and I don't see where there is any difference. The rate is the same and the service is the same.

Q. You get an extra compensation for that consolidation at South Jacksonville which you spoke of, do you not?

A. Yes, sir.

Q. Is it not a fact that if your railroad had been able to promptly receive and expeditiously to handle all the fruit and vegetables that grows on the southern part of its line last winter, your claims would have been less and your revenues would have been more.

A. The claims would have been less.

Q. Wouldn't your revenues have increased?

A. In what way?

Q. Well, wasn't there a good deal of the stuff that had to be left in the field last year because you didn't have—

A. Yes, there was some, not a great deal. There was some due not to the delay of the vegetables but to the shortage of crate material.

Q. That was crate material being transported over your line?

A. Yes, sir.

Q. And to what was that due?

A. That is a large question, but it was due primarily to the failure of the telegraph wires.

Q. Well, wasn't there a congestion of traffic in your lines last spring?

A. Yes, sir.

(That's all.)

Re-direct examination.

MR. ABRAMS: Q. Mr. Kirtland, you were questioned in regard to your agent making up the cars at South Jacksonville; did you employ a force there or workmen for that purpose?

A. Yes, sir.

Q. Now, you spoke of those claims, this large amount of claims, ain't there a great many of those claims presented whether delay or injury was caused on points far beyond your line?

A. Yes, sir.

Q. Under the law which enables them to sue or send them to the first shipper?

A. Yes, sir, that is true.

Q. Now, in regard to this delay which Mr. Boggs referred to last year, how long did that delay last?

A. About—We had trouble about a month, but it took us a little longer than that to get it cleared up, get out of the wire trouble, about a month.

Q. Any trouble in regard to the water supply?

A. Oh, yes, we had water failure, water supply, that was one of the incidental troubles, but the same trouble was because of the failure of the telegraph wires. That was what got us into trouble and then every little thing added to it.

Q. Now, Doctor Needham asked you in regard to car load shipments, how long have you been familiar with the movement of fruit and vegetables in Florida?

A. About six years.

Q. In those six years did you ever know it when there was no car load shipments, hasn't there always been car load shipments?

A. Oh, my, yes.

Q. Now, I come to the next question you have been questioned on, and that is in regard to this Cuban pineapple business that you handled; how do you handle it? Do you have to stop at stations and pick it up?

A. No, sir, it was being shipped by one man to one man, in train load lots.

Q. Hauled in car load lots?

A. Train load lots, yes, sir.

Q. And not in small lots?

A. No, sir.

Q. When you got it at your road at Knights Key and put it on you didn't have to touch it until you got to Cuba?

A. To Jacksonville.

Q. Did you have to furnish a packer at the side track?

A. No, sir.

Q. One consignor and one consignee?

A. Yes, sir.

Q. Have you ever estimated or considered the difference in expense you had in handling that Cuban pineapple business, could you form approximately any estimate of the difference in cost to your road?

A. You mean the cost of transportation?

Q. Of receiving that stuff, say at Key West or Knights Key, and just putting it on the car, and the difference it cost to you on the line of the road in receiving these in small lots, parts of cars, train facilities and the like.

A. I never tried to figure that, I don't know, I don't see how we could figure it.

Q. And yet, that is all in addition to the expenses you had at Knights Key?

A. What is in addition?

Q. These facilities you offer. On these pick-up

trains, that is, furnished the side track and everything all so much more than you have?

A. Oh, yes, we didn't have any of that at Knights Key, of course.

(That's all.)

Re-cross-examination.

MR. NEEDHAM: Q. You stated that these shipments, these car load shipments on these side tracks were loaded by the shipper, who transferred the pineapples from the boat to the railroad?

A. That was done jointly by the Steamship Company and the Railroad Company.

Q. You had the expense in loading trains at Miami and at Knights Key?

A. No, sir, none handled through Miami, Doctor.

Q. Well, Knights Key?

A. Well, Knights Key, the system on which it was worked was that the Steamship Company would unload from the dock and we would load from the dock to the car out of which they give us an allowance of two and a half cents a car to cover that expense. It was out of the steamers' part. So that they covered the expense that was to us. It was supposed to cover the expense.

Q. Was that two and a half cents a part of your rate that you had stated?

A. Yes, that was out of their earnings. Out of their part.

Q. You mean out of their share, whatever the expense is of fifteen cents?

A. Yes, sir.

Q. Then, they only got thirteen cents?

A. They got twelve and a half.

Q. You got two and a half then in addition to the rate for loading?

A. Yes, sir.

Q. Now, I see that the Company was at a very large expense in the dock and dredging the chan-

nels for the business; do you know anything about that?

A. In Miami?

Q. Yes.

A. I don't know anything about that.

Q. You don't know how that would compare with the expense of putting in these side tracks for cars?

A. No, sir, I was not connected with the railroad at that time.

Q. Well, the fact is that there was connected with a transfer from the boat and making connection with the boats from wharves a considerable expense to the Company that did not apply to shipments on the line.

MR. ABRAMS: I confess, I don't understand that question.

A. I understand you, is that the building of the dock, building of the dock to reach the boat, is that what you mean?

Q. Read the question.

(Question read to the witness.)

A. No expense.

Q. Didn't you have to make the transfer?

A. From the dock to the car, but we were paid two and a half cents.

Q. I asked you about the expense of doing the business, there was an extra expense of doing the business, wasn't there?

A. Well, we were paid for that.

Q. It cost you something?

A. It didn't cost us anything.

Q. Well, if you got paid for it it was on the theory that it cost you something, didn't you have to hire men to do it?

A. It did cost us, we hired men to do it, but we were reimbursed for that expense.

Q. And you furnished the facilities for the boats to make connection with the railroad by way of wharves and entrances through the channel didn't you?

A. Yes, but not for handling pineapples.

Q. Oh, not specially for pineapples but for all traffic?

A. When that dock was built that was before we were trying to handle any pineapples.

Q. Oh, I understand, but it was for the general traffic that came over the boat?

A. Anything that would come, yes, sir.

Q. And the general expense upon that traffic, pineapples as same as any other traffic?

A. Oh, yes, perhaps that part of it.

Q. During the time that you were carrying the pineapples from Cuba did you run those cars on a special schedule?

A. Yes, sir.

Q. They were run on passenger schedule, were they not?

A. No, sir.

Q. Were they run on special schedule?

A. Well, we didn't have to stop for anything which we tried to get—

Q. What did you do with reference to the schedule for those trains?

A. Well, we undertook to make a schedule of twenty miles an hour, that is what we tried to do, we didn't always do it but we tried to make that schedule.

Q. That was for that traffic?

A. Yes, sir.

Q. What was the schedule for the other traffic? For Florida pineapples?

A. The pineapple schedule on Florida traffic was fifteen miles, but that included the pick-up service. We told the Florida growers we would give them the same service if they would give us the car loads and let us handle it the same as we were handling the Cuban pineapples, but they couldn't see their way clear to do it. They wanted to do it their way.

Q. You mean the less than car load lots?

A. Yes, sir, the less than car load lots, and car

load lots together. They shipped some less than car loads and some car loads, the pick-up service and all.

Q. Well, the pick-up service was to pick up the car loads?

A. Oh, yes, that is all included in the fifteen mile schedule. After we got the pick-up service we made just as good time as we did with the Cuban traffic.

Q. You mean the same schedule, twenty miles?

A. We didn't figure on any twenty-mile schedule. we had a schedule arranged for the Florida pine-apples. It was on a time card which contemplated fifteen miles an hour to Jacksonville including the pick-up service.

Q. Now, if this pick-up service had been eliminated—

A. Running between stations was just as fast as we had on the other.

Q. But I am speaking of the actual time of running.

A. Of the actual time of running for the Florida pines was fifteen miles including the pick-up service.

Q. And the other was twenty?

A. Without pick-up service, through service.

Q. Were these exhibits number fourteen and fifteen to the petition made out by you?

A. Yes, sir, made out by myself with the help of the men in my office.

Q. How did you make up that statement, what was the basis?

A. Well, now, I will have to tell you about these figures to begin with. When I started to make up this statement the opinion of the Commission had been badly delayed, nearly a month after it was rendered before we got it. I got it one afternoon, I worked nearly all night to get up the statement for Mr. Beckwith to look at it so he could see how it was going to affect us. I had no idea this was to be filed. I sent it to him and he sent it to Major Abrams, and it was filed without my consent and was later discovered by me, and I thought that there

were clerical errors in it. But the general basis I applied from my general knowledge I had of the circumstances to see what the actual result would be for their information. This was intended solely for their information. I figured it on this basis, say eighty per cent car load and twenty per cent less than car loads and figuring on that basis what the revenue would be under the old rate, and what they would be under the new rate and that is the way these figures were arrived at.

Q. In order to get them up in the respect in which you speak, car loads and less than car loads?

A. Yes, sir.

Q. So that, that is not a statement based upon the actual movement as shown?

A. No, sir, it was not. It was gotten up very hurriedly and was not even revised and was not even intended by me to be filed. I didn't know it was going to be filed.

Q. There are some errors in the computation in that statement?

A. Yes, I noticed it.

Q. I mean errors in computing it upon the estimate as you make it?

A. Yes, sir.

Q. How much was that?

A. I didn't go over the figures. He called my attention to it.

Q. You looked them over at that time and found that there were errors in it as shown by the summary?

A. Yes, sir, I found clerical errors one place, I think one place was ten thousand dollars error.

Re-cross-examination.

MR. ESTERLINE: Q. Mr. Kirtland, Major Abrams in referring to the claim resulting from the delays, that the delays sometimes occurred on the connecting lines on the Florida East Coast Railway Company?

A. Yes, sir.

Q. Did it not happen in most instances that the delay originated or the delay already had commenced at the time it left the Florida East Coast where you were running?

A. Why, I would not say in every case, but practically that is true.

Q. Practically that is true.

A. Yes, sir.

Q. In the adjustment of claims in which you recognized liability the connecting lines prorated on the basis of connecting with them did they not?

A. Yes, sir.

Q. And you in adjusting the claims looked to them to stand their proportion?

A. Yes, sir.

(That's all.)

Re-cross examination.

MR. BOGGS: Q. Mr. Kirtland, is it not true that that cultivated area of Key Largo is decreasing in recent years?

A. I think that is true, Mr. Boggs; I was not familiar with Key Largo for a year ago, I guess.

Q. It is true is it not?

A. Yes, sir, it is my understanding that it is decreasing.

Q. It is true that there is a lack of fresh water down there on those keys, isn't it?

A. Yes, sir.

Q. They have to depend on rain water for their supply?

A. Yes, sir.

Q. And is it not true in recent years, especially since your line has been constructed that these embankments have been a tendency towards overflows with salt waters more destructive than they used to be?

A. I couldn't say about that.

Q. But there has been overflows?
A. I couldn't say about that, I don't know, I never heard.
(That's all.)

Re-direct examination.

MR. ABRAMS: Q. Was the dock at Knights Key constructed primarily for articles of commerce, or for construction work?
A. For construction work.
Q. Is it not a fact that you stopped this pineapple business because it interfered with construction work.
A. Yes, sir, that is true.
Q. And those docks were not constructed for railroad commerce with Cuba, was it?
A. No, sir.
Q. Now, you were not familiar with the situation you say before the road was moved—You were not with the road when it stopped at Miami, were you?
A. No, sir.
Q. You say you came with it afterwards?
A. Yes, sir.
Q. Do you know of any pineapples or do your records show of any pineapple movement from Havana to Miami?
A. The records will speak for themselves, but I am certain there was not any movement. I never heard of any.
(That's all.)
(Witness excused.)

Thereupon the Petitioner to further maintain the issues upon his part produced and caused to be sworn as a witness one Ben Carter, who testified as follows:

BEN CARTER.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. Ben Carter.

Q. Where do you reside?

A. St. Augustine.

Q. What is your business or occupation?

A. I am Superintendent of Maintenance and Way of the Florida East Coast Railway.

Q. How long have you been connected with the Florida East Coast Railway?

A. Twenty years.

Q. Mr. Carter, holding your position, what have you got to do with having a knowledge of the land and right of way used by the East Coast?

A. I have knowledge of all the right of way of the East Coast Railway and station lands and those grounds adjacent to it that belong to the Railway Company.

Q. Have you examined the land valued (Handing witness list of land testified to by different witnesses as to the valuation in 1907). Have you examined this list?

A. I have looked those lists over and all the lands that belong to the Railroad Company, I will have knowledge of them, that is, to the corporation.

Q. Now, do you know these lands yourself that the Railroad Company has in its right of way?

A. Yes, sir.

Q. And uses for railroad purposes?

A. Yes.

Q. How did you find these lists, were they correct or incorrect?

A. Well, in some minor items which I don't remember there are some there which are not as we call them railroad lands. They are in some of the subsidiary companies.

Q. About how much?

A. I couldn't say; I haven't any idea. Not very much though, probably one or two, but I don't know as I could identify it on the list. I didn't think about it that way.

Q. Did you find any omitted that should have been considered?

A. There are some that are omitted that will be shown on the drawing map that I prepared that shows the right of way and shows it complete, every bit of it, and that which is outside of the railway and the station grounds.

Q. But I mean, Mr. Carter, those as to future purposes, you say you found they were not possibly lands that were used for railroad purposes, was the amount largely involved?

A. No, sir.

Q. Will they about balance those you found belonging to?

A. Well, as a matter of opinion, yes. As a matter of absolute knowledge, I couldn't say.

Q. Now, let's take Duval County first—

A. Those are duplicates you have there. I would like to explain if you will let me, explain it in my way. Perhaps you can better understand it then. Major asked me to furnish him with a map of the county, the right of way—with a map of all counties and the right of way in that county shown upon it, and any outside land which we might own. Well, now, in order to get the map of the county and the whole road by counties on a scale large enough to put the railway on, would be a map as large as this room, so I adopted this method of doing it. For instance, here is Duval County the first one. I have made that on a scale that shows correctly the location of the road through it so that you can follow through there and that shows where the road is located in every part. Then it is in such form that it can be followed down here. They have shown them in ten-mile strips. This represents the right of way, fifty-foot or more or less will be in some

places of course. The red part of it shows the right of way as we own it.

THE COURT: What is the width of your right of way?

A. As a general thing fifty feet on each side.

Q. From the center of the track?

A. Yes, sir.

Q. Is it a hundred-foot right of way?

A. Yes, sir. There are some places where we had to buy a little more where a man would not sell just simply the right of way. Now, for instance, this particular piece (indicating) is one quarter. We couldn't get the right of way, as I understand it, although it was before my day and they had to take that one-quarter from the man. Now, as I understand the Major's question, he wanted to know everything that was outside or was not considered right of way. Therefore, we had a little bit of a corner on that side and a little bit of a corner on this (indicating) of this one-quarter track that sticks out there. It is of no use to anybody in the world except to the right of way. Now, that is the station ground at South Jacksonville which I show here in order that you may know what is intended by that. Here is a plan on a small scale of South Jacksonville showing our properties at South Jacksonville.

Q. Now, what does that yellow indicate?

A. That yellow indicates property used as station grounds and yards and tracks.

Q. What is the blue?

A. The blue is property purchased since 1907.

THE COURT: Why do you speak of South Jacksonville so much, is that the point where you make up your trains?

A. That is our terminal.

Q. It is not in Jacksonville itself?

A. No, sir, our yard.

Q. Didn't we come through South Jacksonville coming down here?

A. Yes, sir. And here is the river, Judge, you

come up about a mile here and there is South Jacksonville, and here is the Mayport division comes in here. Now, that follows clear on through each county. That explains the principle of the map of each different county where we own anything outside of that. We own a little piece out here at Bayyard and we own a little piece out here where the station house sits.

THE COURT: Q. How many counties does the road run through?

A. Eight. And here we have the map showing the Mayport division and showing our own out there. This represents the right of way through the marshy land of Pablo Creek. It shows Pablo down here because we own the station ground outside of the right of way at that point. We own three lots in there and I show the right of way followed on around into Mayport. And this property is all used by us for warehouses where we receive our coal and the passenger station is all in there, which is fourteen hundred feet long here.

Q. Now, explain that, it is necessary to show that.

A. That is our sand pit at the seven-mile post on the Mayport division. We bought that to have tracks in there and haul sand from there to-day, we bought it for the purpose of the sand pit and it is being so used.

Q. What is that?

A. That is the station ground of Hogan, that is on the fifty feet outside extra.

Q. As I understand you, wherever it is marked yellow—

MR. NEEDHAM: This in an eighty acre sand pit?

A. Yes, sir, that is where it shows there.

MR. ABRAMS: Q. How many sand pits have you on the main line of the road?

A. I thought this was a simpler key so everybody would understand it with this other map if you want to identify any other particular place. Now, that is seven hundred and twenty feet south of that. That

gives you the width of that, and that makes it about thirteen hundred feet across there. I want to make it clear before you begin to question me.

Q. Now, does it show all of Duval County?

A. Yes, sir.

MR. NEEDHAM: Now, so far as showing the right of way and lands, these maps by counties are just as good as the witness' testimony, and we understand the scheme and the way in which he has made it up.

MR. ABRAMS: But, it is necessary for him to explain it.

MR. NEEDHAM: The only thing it seems to me now is to identify the testimony of this witness with reference to the lots and sections with this map. You have done that.

MR. ABRAMS: I offer this in evidence of Duval County.

Q. Now, here is the same situation. Now, do you just want me to put this in evidence or do you want me to examine them?

MR. ESTERLINE: I think, Major Abrams, the witness ought to identify them and state the manner in which they are made. See if they are correct.

MR. ABRAMS: He says he has examined them. Here are copies of the same thing that you made. Here are copies of the valuation given before Judge Archbald. These are the originals made by those men and then I submitted them to Mr. Carter and asked him to go over and see if they are correct, and he has answered me except in a few minor parts he found them all correct covering the land for the right of way and held for railroad purposes. If you want to go any further into further detail I am willing to do it.

MR. NEEDHAM: I think we can shorten it some. In the first place the statement you have made as to this first County applied to all these counties?

A. Yes, sir.

Q. They are all made up on the same general plan are they?

A. Precisely.

Q. And you state as a witness that they are correct as showing that right of way and showing in particular cases the lands that are outside of the right of way that are owned by the road.

A. Yes.

Q. In every case through every county?

A. Yes, sir.

MR. NEEDHAM: Now, with this statement of record, if these can all be filed and numbered we will undertake to go over them to-night and see what points we want to cross-examine about, and they will save a great deal of time. Of course, there are strips here that there are no questions about at all, but there are some points that Mr. Boggs thinks that he wants to make some investigation.

MR. ABRAMS: Well, I offer all these in evidence.

Q. Are these maps correct statements of the right of way and the lands used by the railroad company for railroad purposes?

A. They are.

Q. Now, Mr. Carter, in your capacity of Superintendent of Maintenance and Way, have you got anything to do with the character of lumber or material you put into buildings on the line of the road?

A. Yes, sir.

Q. What is the character of that?

A. The best we can buy.

Q. What does it consist of?

MR. NEEDHAM: I don't think that is a proper answer, the best we can buy.

THE WITNESS: Well, I will have to draw you a specification, I will quote the specification on which we buy it, but then I would want to separate that into two or three kinds of timber, house, building material and bridge material. The stringers for bridge work is absolutely all heart. I buy the best, my intention being that our specification for lumber shall be what is known in the trade as Prime 1883, which is better than the Prime of today. We en-

deavor to hold the specification of not less than nine inch heart on bridge material measured at the narrowest place. On our stringers we insist on their being all heart and the ties which are on the bridges six by eight by six inches. We have most of them at least seven and a half inches on heart only. That can't be not quite what we would call clear. It takes a practically all heart specification.

Q. Now, what is the character of your material for your buildings?

A. For the interior work we buy what is known as the straight Merchantable, the same as any one will buy. For our sills and joints, that class we insist upon all heart.

Q. What is your system now of inspection?

A. We make an annual inspection and that annual inspection is made by the Supervisor of bridges and buildings, which embraces every individual construction whether a bridge or a building and that examination is made very thorough. In the bridges it is made with testing bars, which are steel bars trotted into it so as the eye shall not be seen and we take it and go over every stick of timber in the bridge, ties, stringers, caps, sills, posts and everything. In our buildings, the inside joints, the sills, porches and everything that is visible is tested and examined for its condition. And for these examinations a bill for the material for the repairs of that year is made right there in what is known as the Inspection book.

Q. What do you do, suppose you find it shows depreciation?

A. It is marked. New timber is bought for it, and it is repaired within, sometimes within two or three days, and sometimes within two or three months, but always during this same year.

Q. What is the effect of that inspection and continual repairing of buildings?

A. Well, it has a tendency to keep the buildings in just as proper good condition as they were when they were constructed.

Q. You say that applies to every one of your buildings?

A. To all of them, yes sir.

Q. How frequently do you paint them?

A. As may be required to protect the wood. We do a little painting for looks, but most of it is done for preservation of the wood. When the wood gets bare we paint the building.

Q. Now, to what extent would you consider your buildings as they now are have depreciated since they were built?

A. Why, I would not be willing to admit any depreciation at all, except as a whole, because I tried to maintain them during my twenty years so that they will always be serviceable. There are no buildings that can be classified for the use for which they were constructed.

THE COURT: Don't you make an estimate, Mr. Carter, for the annual depreciation for the buildings?

A. Not in my department, I don't have anything to do with that. I figured the buildings up in service and in good condition and if I am permitted right here to say, it is true more than any other road. It is a one man ownership and a one man system and that is my way of doing it and it seems to be acceptable to Mr. Flagler, and it has been for these many years. I take pride in it.

Q. Now, in regard to the land used outside of the railway for railroad purposes, what is the use generally of those lands?

A. What, lands that are out side?

Q. Yes.

A. Why, I would like to answer that more specifically, Major, as to some particular tracks because we have done—well, I will wait and call your attention to that later.

Q. Now, I want to ask you this question, in a matter that will bear on the present value. In the matter of your bridge work, are you still using on them all wooden material?

A. No.

Q. What are you using?

A. We are using steel stringers, replacing the wooden stringers with steel.

Q. Why do you use the steel construction?

A. Because of the increased scarcity of timber suitable for wooden structures and the prices that we have to pay for them.

Q. What have you got to pay for timber for stringers for wood?

A. Why, twenty-five to thirty dollars per thousand F. O. B. the mill wherever they may be located.

Q. You have any expense in bringing it to the work?

A. Bringing it to the work, yes.

Q. About how much have you had to put in of steel stringers since 1907?

A. Yes, I put in about six thousand track feet since then.

Q. Which would be equal to six thousand track feet?

A. Yes sir, equal to six thousand track feet.

Q. Are you still putting in steel in place of wood?

A. Working on steel now on the bridge over Lake Worth.

Q. What is the difference between steel and wood?

A. Well, there is about eighty-one cents a lineal foot.

Q. And since 1907 you say you have put in six thousand feet?

A. Six thousand feet. A fraction over, I don't remember just what it was. My intention is to put in about two thousand feet each year.

Q. Have you exchanged any wooden bridges for steel bridges since 1907?

A. Yes, we exchanged one at Fort Lauderdale over the New River.

Q. What is the difference in the cost of the bridge that you exchanged?

A. Well, the original bridge cost me about one

thousand dollars and the new one cost me eighteen thousand—No, that cost me down there about thirteen thousand dollars as against one thousand dollars.

Q. Have you put in any steel bridges anywhere else?

A. One on the Pablo Creek.

Q. What was there before?

A. A fixed span and we put in a draw bridge in the place of it.

Q. Why did you put in a draw bridge in place of the span?

A. Because they dug a canal down there and forced us to.

Q. They entered proceedings against you and forced you to?

A. Yes sir, but they paid for part of it.

Q. Now, what did that steel bridge cost you?

A. That cost me about eighteen thousand dollars, eighteen thousand dollars and some cents.

Q. Mr. Carter, who has the contract to purchase ties?

A. Well, that is mostly purchased through my office, nearly all of them.

Q. What are you paying for ties now?

A. As a general thing about forty-eight cents a piece.

Q. Have you had to pay more than that?

A. I paid more than that for a good many. I bought about seventy-five thousand this last winter for which I paid fifty cents and fifty-two cents.

Q. Delivered where?

A. Delivered F. O. B. cars in Jacksonville.

Q. And you had the increased expense of hauling them down?

A. Yes, wherever they were used.

Q. Now, what do you estimate is the expense of inspection and carrying them to the point for work, the average?

THE COURT: Now, you are going to the testimony to the cost of reproduction?

MR. ABRAMS: Certainly, as to the present values. We can't buy them for what we could two years ago or in 1907 or two years from now, we can't buy them for what we can get them now.

Q. What would you say would be a fair estimate of the cost of inspection and expense of transportation down to your work?

A. Well, you know those are delivered at different points and are purchased at different points and have different mileage credited to them.

Q. But, take it as a whole, Mr. Carter.

A. I have not been able to figure that out exactly, but so far as I have been able to do and so far as I have been able to ascertain from other maintenence of way men, it runs between twelve and fifteen cents a tie, inspection and hauling, but I think that is the best information I can get. It costs me somewhere between twelve and fifteen cents. It is one of those matters of calculation as far as that is concerned.

Q. Now Mr. Carter, what have you got to do with the matter of side tracks, construction of side tracks, spurs, and the like, that is embraced in your department, is it not?

A. All that are constructed are constructed under my directions.

Q. Take the road as a whole, could you estimate how many miles of side track and yard track it has got on it?

A. No.

Q. Approximately?

A. There is over one hundred miles of it, Major, but I can't say exactly how much. I have got those figures, but it has slipped from my memory.

Q. Now, you have knowledge of these sidings and spurs that have been put in for packing houses and groves and the like?

A. Yes.

Q. Are those all the side tracks you have in that territory?

A. Those which I lay—Now, ask that question again, Major.

Q. I say there has been quite a number of spurs and sidings for individuals, packing houses at the groves, put in down there in South Florida, have there not?

A. Yes, sir.

Q. Have those been your only side tracks down in that territory, or have you had the regular side tracks at the stations?

A. We have the regular side tracks at the stations, the regular commodity tracks, or wagon tracks as they are called.

Q. Then, these spurs or sidings are in addition to those regular tracks?

A. Yes, sir.

THE COURT: Gentlemen, I think it is time to adjourn. We will take an adjournment until ten o'clock tomorrow morning.

Thereupon at five o'clock and twenty minutes Court adjourned until Thursday, March 14th, at ten o'clock A. M.

At ten o'clock A. M. Court convened pursuant to adjournment.

MR. ABRAMS: If the Court please, before putting Mr. Carter back on the stand, I wish to offer in evidence the following: This is a carbon copy furnished by the official reporters of the Interstate Commerce Commission, the proceedings taken before the Commission of the petition of the Florida Fruit and Vegetable Shippers' Protective Association against the East Coast and other roads in 1908 and on which the Interstate Commerce Commission decided that these rates were reasonable and declined to reduce them.

I also offer in evidence the testimony, also the carbon copy of the official reporter taken in the latter part of December, 1909, at Jacksonville on the petition of the same parties to reduce the rates from basing points in Florida to points beyond the State and also so far as the East Coast is concerned to fix rates for making up car load lots at South Jacksonville and which resulted without any other offer that I have been able to find of the reduction of the rates on pineapples.

I next offer in evidence proceedings taken in March, 1911, at Jacksonville, Florida, before the Interstate Commerce Commission on the petition of the same petitioners to reduce the rates on vegetables and citrus fruit to the same as on pineapples. That is also from the official reporters.

Now, I wish to enter into the records the fact showing that this last might be explained. After this testimony had been taken in Jacksonville I received a notice from the Interstate Commerce Commission that the hearing in this case would be resumed in Washington at a certain time, and I immediately proceeded to Washington and with Mr. F. C. Bryan, the local Attorney at Washington of the East Coast Railroad, we went to the Interstate Commerce Commission and there we were advised by Mr. Prouty that our notice for this road was a mistake as the proceedings had did not concern the East Coast Railway at all. There was one day's session and I remained and heard it through which was confined exclusively to the Seaboard Air Line Railway and the Atlantic Coast Line Railroad. Now, what the proceedings were that occurred on that day I have not received, but will get a copy and file in addition to this. This is the entire proceeding in Jacksonville in which we were concerned at all. These are offered in evidence with the understanding that we will get the Secretary of the Interstate Commerce Commission to certify that they are correct carbon copies of the original on file. Your

Honor will see they are the Official Reporter's transcript.

THE COURT: There is no point on that, is there?

MR. NEEDHAM: They will have to be certified, of course, your Honor, but it is understood that they are to be certified. There is no question but what these are the carbon copies of the reports.

MR. ABRAMS: There is no question about it, it is all we got or ever received.

MR. NEEDHAM: Now, I wish to state on behalf of the Commission that upon the issue raised in the petition that there was a want of evidence to support the order, or upon that issue we have no objection to the introduction of the testimony. Upon the issue as to the confiscation, so far as they desire to use any part of this testimony, I don't suppose we could object if there is any such testimony. I do object, however, to the statement of the Counsel with reference to what occurred between him and Judge Prouty. I know nothing about it. I don't see how we could put Judge Prouty on the stand to testify with reference to such interview, and it seems to me an improper statement to go into the records to be considered. I therefore, object to that statement.

THE COURT: You mean particularly the statement in which this road was not involved?

MR. NEEDHAM: Yes, sir.

MR. ABRAMS: The purpose of that statement—Probably you misunderstood me, Doctor, the purpose of that statement is simply to explain that I have not got here any official transcript or any copy at all which was taken in Washington on that day.

MR. NEEDHAM: Oh, if that is the only purpose, we have no objections to it of course. If it is merely to explain why it is not here today, I withdraw my objection to it. I supposed that he was claiming some estoppel by reason of the statement of Judge Prouty. Now, any statements made in the hearing by the Commission is now a part of the record, as

it will be observed a Commissioner did call attention to certain things at the beginning of the hearing, and still the statements were made which are a part of the record. Now, aside from those two issues for the purposes I have named we should object to the testimony as incompetent upon any other theory of the case or theories. I desire to reserve all questions as to its materiality, relevancy, or competency, or any other question.

MR. ABRAMS: Now, if the Court please, in view of what Dr. Needham said, I don't want it understood I am seeking any kind of estoppel or reflection on Mr. Commissioner Prouty. I am simply explaining why we did not have any copy of that testimony.

MR. ESTERLINE: Now, on behalf of the United States, as to those exhibits now offered which was adjacent to the evidence had and taken before the Interstate Commerce Commission, in a hearing on which the preceding order is made, the United States does not object that the order issued was against the weight of the evidence. As to any other issue except the confiscation of property the United States would object to it as incompetent, irrelevant and immaterial.

As to those exhibits now introduced which relate to the records and proceedings of other cases before the Interstate Commerce Commission preceding the case in which the order of the Commission was entered, and which is now in controversy here, we have had no opportunity to examine those. Now, understanding that they were going to be offered I would like to reserve the right to object and move to strike it out the hearing of the case if it appears that they are not in any way connected up and have no relevancy to, and do not form a part of the records on which the proceedings here are based. That is to say, if it is made to appear that they were entirely disconnected with this proceeding and merely incidentally referred to, then we should want the right to strike them out before it is made a part of the permanent record. Before it is made an issue.

THE COURT: I think they better be offered in evidence subject to certification by the Secretary of the Interstate Commerce Commission.

Thereupon the witness, Mr. Carter, was recalled, and having been previously sworn, testified as follows:

Direct examination.

MR. ABRAMS: Q. Mr. Carter, on yesterday you testified to the present cost of ties, can you state approximately the aggregate number of ties on your line of the road from Homestead north with the branches, what is the aggregate number?

A. About one million, seven hundred thousand.

Q. What is the average life of a tie in Florida?

A. Between six and seven years.

Q. What is the amount of your replacement?

A. Every year. Well, that varies, it runs from two hundred thousand to two hundred and seventy-five thousand ties per year.

Q. Then, every six or seven years all of the ties on the road have to be replaced with new ties?

A. Yes, sir.

Q. Now, do you do anything to cover those ties from the weather as you do in buildings?

A. Nothing at all.

Q. Why not?

A. We couldn't very well cover the tie. We can paint it as done in the buildings.

Q. What is the reason for not covering or painting the ties?

A. Well, in painting and covering a tie it would not be of any value so far as I can see.

Q. Have you not got to take the timber and stick the holes in its natural place so that you can ascertain any latent defects to ascertain the safety?

A. We do that with all parts of bridge or material. Put no coverings of any sort on the timber

because it hides the defects. It hides the defects and we can't see it in making the examination.

Q. Can you state about the average cost per lineal foot of trussel prior to June 30th, 1907?

A. Well, in those years it was running about six dollars a lineal foot for the standard Trussel work.

Q. What is the present cost per lineal foot of trussels?

A. As near as I can work it out, about eight dollars or eight dollars and forty cents. Some of it is done more.

Q. Have you ever paid as high as eight dollars and forty cents?

A. There is a track in existence now for eight dollars and forty cents.

Q. How much trussel in the line from Homestead north, including the branches?

A. About thirteen miles.

Q. Mr. Carter, have you built any additional sidings or spurs since 1907 on your line of the road from Homestead north, including the branches?

A. Yes, sir.

Q. Can you state approximately how many miles you have built?

A. No, I couldn't state positively, I never figured it up that way, but we have built about forty-seven additional new ones along the line of the road during the past year.

Q. During the past year?

A. During the past year and some every year.

Q. Now, have you got the total number of these sidings?

A. Yes sir, I will look and see.

Q. From Homestead north?

A. Yes, sir. There is one hundred and four of them, that is the total number on the line.

Q. One hundred and four miles?

A. One hundred and four miles.

Q. What is the aggregate mileage including sid-

ings and spurs of the road from Homestead north including the branches?

A. Excuse me, I want to correct that. For the mileage and not the number of buildings you asked me? I want to correct my statement, that was the mileage you asked me and I thought it was the number of side tracks. It was a hundred and fifteen miles. I will have to figure a little on that other one.

Q. Four hundred and ninety miles is approximately the distance?

A. Four hundred and ninety miles.

Q. Of main track, main line and branches?

A. Yes, sir.

Q. And you had one hundred and fifteen miles of sidings, spurs and so forth on the four hundred and ninety miles of main track?

A. That is right.

MR. ESTERLINE: Please state that again.

A. As to mileage, sidings and spurs, a hundred and fifteen and the thirty-eight hundred on four hundred and ninety miles of road. That is approximately correct, that four hundred and ninety, I am stating it from my memory.

Q. I think you have about two or three miles more than you figured it up, but I am willing to accept that. Do you include the line from Enterprise to Sanford?

A. I did in this calculation, five miles.

Q. Now, who cares for that track?

A. We care for it, maintain it absolutely, as we do our own.

Q. If any replacement of rails is necessary, who replaces it?

A. We do it entirely.

Q. Then, except that it is leased you have the complete dominion over that piece of road?

A. Yes, sir.

Q. How many miles is that?

A. About five miles.

Q. In your statement of the mileage of trussels

you have on your road, is there any trussel included from Enterprise to the St. John's River? Any trussel between Enterprise and the St. John's River?

A. Oh, Enterprise.

Q. Yes, Enterprise and the St. John's River.

A. There is no regular trussels, there is some box openings and culverts in there but not in any great length, small openings, I don't remember just how much, probably not altogether not more than six or seven hundred feet.

Q. Any trussels proper?

A. There is one trussel proper about sixty feet long, the balance is what we call box openings.

Q. Have you got to keep them up?

A. Keep those up, everything.

Q. Now, in regard to your trussel inspection and repair, state what you do.

A. We make annual and complete inspection of every trussel. That is done by the Supervisor of Bridges, accompanied by the division or District foreman of bridges, and usually by a recorder. And every piece of timber in each of the trussels is tested with the testing bar, examined by the eye wherever there is any evidence of age or appearance of age, which goes by the man's judgment about those things, that timber is thoroughly tested in a dozen or more places to see if it has any defect in the way of defect. From the outside where it is unpainted and uncovered with any material to protect it from outside influences, it rots from the outside.

Q. Now, since when have you been in charge of all this work of maintenance of way?

A. Since April, 1894.

Q. During that time have you ever had any accident of any kind in the shape of loss of bridges or trussel being decayed?

A. No sir, the records of this road are clean on that subject. There has never been a wreck due to the failure of a trussel or a bridge.

Q. Now, in stating a trussel at this time cost eight dollars and forty cents a foot and that you have a contract now at that price, does that include any steel girders or stringers?

A. No, wood.

Q. What is the difference in the price of labor at and prior to June 30th, 1907, and the present time on the line of your road?

A. That is unskilled labor?

Q. All sorts of labor.

A. We paid one dollar and twenty-five cents a day in 1907 for unskilled labor and we are paying a dollar and a half a day for unskilled labor now. We paid for some of our labor in 1907 only a dollar and now we are paying a dollar and sixty cents a day for laborers in the bridge gang.

Q. How is it in regard to labor generally?

A. Well, the labor generally is twenty per cent higher, well—It depends upon what you are employing them for. The common negro labor used on our trussel is twenty per cent higher than it was in 1907 and in our bridge labor where we get skilled labor we are paying from twenty to forty per cent more for the average man in our bridge gang.

Q. Do you employ any white skilled labor on the line of your road?

A. Some, Italians.

Q. What do you pay them?

A. We pay them a dollar and a half a day, the same as the others.

(That's all.)

Cross-examination.

MR. ESTERLINE: Q. Mr. Carter, you have been with the Florida East Coast Railway Company for twenty years?

A. Yes, sir.

Q. And during that time you have had charge of

the maintenance of way to make repairs on the line?

A. Only eighteen years in that part.

Q. During the eighteen years that you have been in charge of the maintenance of way and the repairs of the line, you have had sole and entire charge, as I understand you, of the entire line?

A. Yes, sir.

Q. And you were allowed liberal expenditures for improvement and building up the road?

A. I was allowed to use largely my own judgment on what was required.

Q. Very well, what your judgment thought was best was adhered to, and that policy has been pursued during all that time?

A. Yes, sir.

Q. And your judgment has been to make liberal improvement to repairs in building for all the line all the time, has it not been?

A. Yes, sir.

Q. As to depots, and bridges, and all those things which go to make the property more efficient in the handling of traffic?

A. I don't know that I can answer just that way because I have nothing to do with the traffic.

Q. I mean to make it attractive.

A. Make it attractive and maintain it in the same condition.

Q. Certainly, if I don't state it I want you to state it in your own way. And that policy has gone on all this time?

A. Yes, sir.

Q. And it is going on now?

A. Yes, sir.

Q. And there has been no curtailment of any kind in that regard when your judgment thought these things were needed?

A. No sir, so far as it pertained to the nature.

Q. Well, any other things that pertained to the welfare of the property?

A. No, sir.

Q. Which came under your charge and control?
A. Yes, sir.
Q. Whatever your judgment thought was best in these matters were final?
A. So far as maintenance was concerned, yes sir.
Q. Now, in doing that you say you have purchased the best of material that could be had?
A. Yes sir, for what it is used for.
Q. And have done that wherever it is needed?
A. Yes, sir.
Q. And still do it, where you buy material you buy the best?
A. Yes, sir.
Q. Wherever they can be had?
A. Yes, sir.
Q. And you propose, I assume, if you continue in that position to continue that policy while you have charge of it, and there is no present prospect of afendency?
A. That is right.
Q. It is going right on?
A. That is right.
Q. Now, coming to these side tracks and the spurs and the packing house plants, if I understand it correctly, these side tracks are built alongside the main line?
A. That is right.
Q. But they are never built outside or along the fruit farms, are they, that sell?
A. In some cases there are some spurs built out into the fruit farms.
Q. In what cases?
A. In the vicinity of Cocoa, Garvy Brothers had one out to their packing house, it was built before my time, I don't know why it was built there.
Q. It was built twenty years ago?
A. Yes, sir.
Q. It had always been there?
A. It has always been there.
Q. So far as you know?

A. Yes.

Q. You were here yesterday when Mr. Kirtland testified?

A. I was here a little while.

Q. Are you familiar with the road where the seven spurs are built within the four miles?

A. Yes, sir.

Q. Do any of those spurs run out into or alongside the fruit farms in any way?

A. They are alongside the fruit farms, and in putting them in they are parallel to the main line.

Q. That is because the fruit farms are parallel to the railroad?

A. Yes, sir.

Q. And the track is built along the railroad and hence of course, is along side of the fruit farms?

A. Yes, sir.

MR. ABRAMS: You say alongside of the railroad it is on the right of way as I understand it?

A. Yes, sir.

MR. ESTERLINE: Q. There is nothing between the right of way and the railroad and the fruit farms?

A. The spurs.

Q. The spurs is built there on the railroad next to the fruit farm on the right of way?

A. Yes.

Q. It does not go out to the fruit farm in any case?

A. No, sir.

Q. Now, as to those spurs built there on the right of way, take for illustration that seven tracks within the four miles, the track is located there and the fruit is loaded by the shippers into the car from those packing plants?

A. I don't know, I couldn't tell you.

Q. Well, those tracks and spurs were built there for that purpose?

A. That is right.

Q. Now, if they were not built there for that purpose, the growers would have to bring their freight to the station at some distance, would he not?

A. Yes, sir.

Q. And that would necessitate additional tracks and facilities at the station if the cars which he loaded there on those spurs, were concentrated back at the station, would it not?

A. No, let me answer that in my own way, because you are picking out specific places. You are speaking of this four miles as I understand it.

Q. Yes, speaking of that because I don't know of any other.

A. Within that territory and at the station there are already side tracks long enough to handle all of the business that would be presented there if these spur tracks were not in existence. Therefore, we would not have to construct any more side tracks so far as I understand in order to accommodate the freight taken for the people at that place, and it would only be necessary to haul their material to these points.

Q. But that does not obtain throughout generally, there are places where it would not?

A. I cannot call to mind where there is a shortage of side tracks for the community or for three or four miles on each side, that has not ample room for all the business transacted.

Q. Well then, if I understand you correctly, you say it makes absolutely no difference whatever, about those spurs?

A. It makes a big difference to the grower.

Q. It makes a big difference to the railroad, does it not?

A. It makes a difference to the grower and it makes a difference to the railroad company, because all switching, it requires more switching, more stopping at these places where there are a greater number of side tracks.

Q. Well, it is a convenience to the railroad?

A. I can't hardly answer that, I am not a transportation man. I could only have an opinion on that matter and not a knowledge.

Q. Now, Mr. Carter, you spoke about there being no treatment of ties and you testified to that at some length, what is meant by creosoting ties?

A. Well, that is an injection of dead oil or tar into the tie, creosote oil into the tie to preserve it. To do that it must go through a process under pressure to inject this oil into the tie, it is a wood preservative.

Q. Isn't that a treatment of the ties?

A. Yes sir, that is a treatment of the tie and is practiced by some.

Q. It is practiced by a great many, is it not? Pretty generally?

A. It is getting more into use, I think. The cost has been prohibitive for cross ties.

Q. You have not adopted that kind of ties?

A. No, except in about six miles of our road on the viaduct.

Q. Well now, speaking of the bridges and the trussels, the Florida East Coast Railway has a road that runs practically on level ground, does it not?

A. Yes.

Q. From beginning to end except when you go down to the Keys, what I mean, where it runs on the land it is pretty level?

A. Yes, we have no hills or mountains. We have a few sand dunes and sand hills on parts of the road.

Q. But so far as the heavy grading and the things of that kind are concerned, you haven't that as a general proposition?

A. As a general proposition, no. We have some that are known as the one per cent grade, which are the maximum on our road.

Q. But so far as the general location of the road is concerned it is as much without grades and cuts and fills, as any other road in the country, isn't it?

A. Yes sir, I think so.

Q. And therefore, maintenance of the road so far as washouts and grades and things of that kind are concerned, they are not as great as they pertain in other—

A. I think they are more.

Q. Why do you think they are more?

A. We are located so close to the coast that we get an overflow of everything and in order to protect ourselves from that and from washouts we have had to enlarge the openings and increase the openings to protect against that and that is very expensive, it is more expensive in construction, in maintenance than to make the bank.

Q. But on the general plan those things don't prevail as they do generally throughout the country?

A. Why, I think we have out full share. I never stopped to make a comparison. We get sometimes five and six miles at one time where it runs in ravines, and again it might only get three and four hundred feet.

Q. Yes, but that is up on the level.

A. It seeps out and our land washes out. At one place we had a strip there nearly six miles long, which it did not touch in four or five years. The rise of the water from the Everglades backing and filling up the ditch, we had to take care of that, which is something we could not provide for.

Q. But in the maintenance, when you come to replace the track, you don't have the grading and fills to make like that, it is on the level ground.

A. It is on level ground.

Q. Now, this complete inspection of trussel, that is the usual inspection made by the railroad generally, is it not?

A. Yes, but I think we do it a little more thorough than the most of any of my competitors.

Q. But it is the usual inspection?

A. It is the usual inspection. It is a little more correct and a little more personal than most others because until the last two years I made that test myself.

Q. But there is nothing unusual, nothing extraordinary about it?

A. No, nothing claimed except the thoroughness of it.

Q. And the same as to bridges?

A. Yes, sir.

Q. And as to this timber and material, it is the same, you give it a little more personal attention and don't claim that you use any different material from that used in the railroad purchase of construction generally, do you?

A. I claim this, that I am using a better quality of timber in my purchases than the other roads are using. I am adhering to a specification or its equivalent that was in use twenty years ago, which was practically all heart. On my twelve by twelve timbers I am taking a nine inch heart face, measured at the narrowest place. But I am still insisting upon the stringers being practically all heart, the only thing being a little say running across the corner, but it must be a seven inch heart face, which is practically all heart. I think the other roads, so far as I have observed, are not quite as strict as that.

Q. Now, this test with the bar, there is nothing unusual about that except the care you take of it?

A. No, sir.

Q. It is no more expensive?

A. No, sir.

Q. Now, as to the labor of your section men, the men on the section, you don't pay them more than a dollar and twenty-five cents a day?

A. One dollar and a half.

Q. A dollar and a half a day?

A. Dollar and a half.

Q. Why is that?

A. Because we can't get labor without we pay it.

Q. Isn't that more than is generally paid on any other railroads?

A. Yes, but the conditions are different.

Q. Why are the conditions different?

A. Because there is not labor enough to supply the demand. This section is growing, developing

and the growers have offered our men. Have taken our men from us, and it has been so for the last fifteen or eighteen years. There has been times when there has been as high as six hundred and forty odd men in the pineapple fields. It is a growing country south of Fort Pierce and in order to keep the men we are forced to pay the prices. The men were going to the fields because the fields were paying more than we were and that is what forced us to pay more.

Q. As to these bridge men who you say are paid a dollar and a half?

A. A dollar and a half to a dollar and seventy-five cents.

Q. But a bridge man is a better class of workman?

A. More or less skilled, but we are using the colored men who don't get what the white men get in the same place.

Q. But they are a better class of laborers, are they not?

A. We pay them a dollar and a half a day when we first employ them. If they stay with us a year or more and are some skilled in that class of work, we increase their pay ten, fifteen and twenty-five cents, that is since I have been here. And some of the men I pay more than that.

(That's all.)

Cross-examination.

MR. BOGGS: Q. Mr. Carter, in looking over this map of Duval County, we find a sand pit of eighty acres on the line, is that eighty acres all necessary for the sand pit?

A. Yes, sir.

Q. What is that sand being used for?

A. For various purposes, of maintaining the road bed and at the present time we are working the steam shovel and the work train filling the marshes across Pablo Creek, and filling the approaches to the

creek where the canal has been dug, and we have now substituted a draw bridge to get an outlet to one point and we have got to put about forty thousand yards of material from that sand pit for that one job. I take some of it out on the main line, of course, where they order out, they call for three thousand yards to be hauled out on the main line; that is the only sand pit we have in the territory of fifty or sixty miles.

Q. I see a tract of three hundred acres or less at Pablo Creek, what does the railroad do with that?

A. That is a tract of marsh land, salt water marsh, we are not utilizing it at all except as a right of way through the center of it.

Q. That bridge that you spoke of erecting at the Pablo Creek, didn't the Canal Company pay for half of that?

A. They paid for one-third of it, is my recollection.

Q. The Railroad Company paid two-thirds and the Canal Company one-third?

A. Yes, that is my recollection.

Q. Now, coming to the St. Johns County, what is the road doing with this Robin's land?

A. They bought that for the purpose of establishing our shop on that piece of property. We got crowded out here down on the marsh.

Q. Do you know what the acreage of that is?

A. I think it is sixty-eight acres if I remember.

Q. Well, that was bought prior to 1907?

A. Oh yes.

Q. Have the shops been established on it?

A. Not yet, we have a lot of tracks on there and a lot of railroad and we had some coal there and rails. It is used as a storage ground on the west side.

Q. Is the east side of it being used now?

A. No.

Q. Now, coming down to St. Augustine, the lot south of King street is what is known as the Hospital lot, is it not?

A. Yes sir, that is a part of it here.

Q. What other use is being made for that besides for the Hospital?

A. That is the only use that is being made for that lot between King Street and the street the Hospital is on. That one lot is used entirely for the Hospital.

Q. Well, is it entirely occupied or not?

A. No sir, it is not entirely occupied.

Q. About what proportion of it is occupied?

A. Why, I would say twenty-five per cent of it with that building.

Q. Now, this track that is colored in yellow here, how much of that is occupied, that is north of King street, and through which the right of way passes?

A. Oh, that is there, that ground is covered with shops, warehouses, paint shops, machine shops and station buildings and yards, and yard, and yard tracks all over that, every bit of that is utilized.

Q. Now, I find here some lots in New St. Augustine that are not adjacent to the railway at all.

A. Is the land in the list, is the land shown on there?

Q. Yes, it shows here.

A. Well, those were bought for the new right of way and I have raited it and the track will be moved on to that within the next sixty days.

Q. Here is a large tract at Neoga, what use is being made of that?

A. All that part on the south side of the track south to you, we call it, is for sand pit purposes and the other side is used to control the lake water where we have our water tank located. We couldn't purchase the lake without purchasing the property about it.

Q. Now, I find a good deal of land valued at Dupont station, I don't quite locate it just exactly.

A. Dupont?

Q. Well, we find it on the valuation exhibit here.

A. Look at the list of exceptions on St. Johns County.

Q. Look at what?

A. The list of exceptions on St. Johns County. Now, I don't know whether these are the lands or not. I don't think it is. There is nothing in the world at Dupont except the station house, one hundred feet wide. Now, I can't carry those things in my mind. Now, I put a list of exceptions, if they had some in there that says "Eight one mile post" and that is all there is.

Q. Dupont is just—

A. Eighty miles. The eighty mile post is located here. That is the only thing we own at Dupont. There is the eighty-seven and all there is, it is stripped through there, that is about twelve hundred feet long and fifty feet wide that we use for station grounds and no other purposes.

Q. Now, we find on the exhibit for St. Johns County on which the valuations appear, the northern portion of H. S. Robinson's land, section fifty-six, seven, thirty, five thousand dollars, does that belong to the Railroad Company?

A. If it does, I haven't any record of it in my office.

Q. Then, we find two strips, section forty-four, township seven, range thirty, three thousand dollars.

A. That must be in the Model Land Company.

Q. We find the right of way south of King Street north to City line, four thousand, three hundred and twenty feet, five thousand dollars.

A. That is in the city as I understand it.

Q. Now, that is put in here Dupont, that is probably a mistake.

A. Yes sir, that is a mistake. King street is here in St. Augustine and we included that property that you asked me about at the thirty-seven mile post. It is that yellow you just asked me about, King street, it is that whole piece of property on this street, and that was some of the little things we owned down there that didn't amount to anything that was not shown in the list.

Q. Now, going to Brevard County, I find here a valuation on the rock road square, is that rock road in use now?

A. No, sir.

Q. That has been discontinued, has it not?

A. That is all discontinued, yes, sir.

Q. Do you remember what the length of that spur was?

A. No, I do not.

Q. Going to Titusville, I find this at the north, what is that track? (Indicating the track in yellow, section thirty-four north of Titusville.) What is that used for?

A. It is not used by us at all as far as I know.

Q. Can you indicate on this valuation exhibit the description of that land?

A. I can't locate it at all on there, I don't think it is shown. I can't locate it on this list at all. I can't locate it at all in thirty-one, it is six hundred and sixty by thirteen hundred. It is about forty acres. That is what it would be.

MR. ABRAMS: It is not in that valuation at all?

A. I don't see it there.

Q. Well, now I find on page twenty-four of this valuation exhibit at Brevard County, a large number of lots outside of the right of way, can you in a general way give an idea as to the use to which all those properties are put?

A. That is all shown here. I can show you all of it. That part down here, was the part that belongs to the old J. T. & K. W. and when our folks bought it they bought of course, what was in it and that still remains there. That piece in there (indicating) is the water tank.

Q. Is that used for railroad purposes now?

A. No, sir, not now.

Q. Well, now will you indicate where it appears on this page twenty-four?

A. I will if he has got it down right. That is not shown so as to be identified on here. It is on section

three. This section three, twenty-two, twenty-five. It is not shown.

MR. ABRAMS: On the valuation?

A. On the valuation.

MR. ESTERLINE: You mean Broad Street?

A. Broad Street is not shown. That was the old warehouse and the station grounds of the J. P. & K. W. used when we bought that out, and we abandoned that and swung around and put the station in here (indicating) and abandoned that.

Q. Now, how is that track described?

A. I will have to see that. It says, "Half of three" which must be half of that block in there.

Q. What is that used for?

A. That is water tank two water tanks on it, two water tanks and a pumping house and tool house and a room for a boiler house, and it also has a big well right in there, a big dug well right in there (indicating). The property is occupied there by railroad buildings.

Q. What is the land in block ten used for?

A. That is block ten right there (indicating), that is used as a part of the station ground, there is the station building there and the approach to the station ground. In other words, it is all open to the public.

Q. What is block twenty-one used for?

A. Block twenty-one on the opposite side has a section foreman house on it and the pumper's cottage on it and the laborer's cottage on it and a tool house and right in front of the station, right in there they have a little park. I don't know what shape it is in now.

Q. What is block twenty used for?

A. Twenty and nineteen have been purchased for the purpose of making a yard in there. That is where the new station building is going to be and this yard is to extend clear to here (indicating). That is what that was purchased for previous to 1907.

Q. Well, nothing has been done with that tract up to now?

A. Nothing except we have built through one end of the track on there (indicating) a lead track, a track from which all the rest is to come has been built through to the station this last year. And they bought this in blue down here later on for the same purpose. That blue was bought to protect this through here so as to give us the whole distance down here (indicating).

Q. Where are lots M. & N. of Robbins and Graham's addition to Titusville?

A. M. & N. are right in here somewhere (indicating). I think they must be right there, that is Robbins and Graham's addition in there. Those lots don't seem to show that as the right of way through it, and they have the warehouses on it and a big carpenter shop down here.

Q. Now, there is a great deal of difficulty in matching up the descriptions by which this valuation has been made, with the map, and the valuations in Titusville running to a considerable amount, by descriptions.

A. It is very difficult to understand from it just what is meant.

Q. Now, that same lot of maps will show Cocoa will it not?

A. Yes, sir.

Q. What are lots B & C on the plant of Cocoa used for?

A. This lot here has a freight warehouse on it and that has a side track on it and that has a wagon track where they drive up to unload car load lots.

Q. Mr. Carter, I will ask you to take this valuation of the properties of Titusville and at your leisure compare them with your map and indicate what proportion of the values are indicated here, not found on your map.

A. Well, all right, but every blessed thing we have got is on there.

Q. Now, on the Titusville branch I find eight four-hundredths of an acre valued at thirty-nine hundred dollars, section thirty-three, thirty-one, thirty-five.

A. Well, that is—

MR. ABRAMS: He is not on the stand on values you know.

MR. NEEDHAM: No, but he is identifying the values with his map.

Q. Have you anything there from which you can locate that?

A. No, give me those little strips. If I have the strips of the Titusville branch, that would be eighty-four hundredths of an acre, just about take the LaGrange.

Q. That is used for what?

A. It has a station ground, LaGrange station is on that. That is four hundred feet long it is here, and it is eighty feet here, eighty feet by four hundred.

Q. Now, in section twenty, twenty-one, thirty-five, there is four and a half acres.

A. I have got it five acres here.

Q. Well, it is four and a half acres here, or five one-hundredths, two separate pieces.

A. I haven't the four and a half showing at all. I have one which would be that place, it is one hundred by three hundred, one hundred feet that way and three hundred feet long, station grounds.

Q. But you haven't any four and a half, and five and five hundredths acres?

A. There is five and five hundredths acres, part of it is used for right of way and part of it on each side—

Q. What is that used for?

A. That is right of way and the outside of it is not used at all, it is simply dead property as far as use is concerned.

Q. You don't find that four and a half acre tract at all?

A. I don't find that at all on this map at all. It don't show. This doesn't show the sections, you will have to give me the county map and I will locate it. There should be a map in there showing the Titusville branch. This map shows the main line.

MR. ABRAMS: Is this four and a half acres on the branch?

A. On the branch it says, yes. I didn't have anything marked here like that.

MR. ABRAMS: Where is that section you are speaking of?

A. That is at the five-mile post, at the five-mile post, and I find the five-acre tract that he speaks of, but there is the four and a half acre tract he speaks of it don't show of record.

MR. ABRAMS: In the same vicinity?

A. Yes, between Titusville and this property?

MR. ABRAMS: What is the value of that Mr. Boggs?

MR. BOGGS: Valued at one thousand and fifty-four dollars.

THE WITNESS: No exception on my sheet?

Q. No exception, no, on your sheet for that.

A. There must be some mistake.

Q. Mr. Carter, I find attached to copy of this Brevard County exhibit a list of exceptions to property shown on your list; is this list of exceptions compiled by you?

A. Compiled in my office by my force.

MR. BOGGS: Your Honor, we would like to have entered in evidence the sheet marked Brevard County list of exceptions.

MR. ABRAMS: We have no objection to that. We also offer in evidence sheet prepared by Mr. Carter marked Duval County showing exceptions to property valued as railroad property. We also offer in evidence sheets marked Palm Beach County prepared by Mr. Carter as an exception to the valuation list. We also offer a similar list at the St. Lucie County, and also St. Johns County.

Q. Now, Mr. Carter, I find in the St. Lucie County valuation thirteen and a half acres north of the railroad, as being owned in Jensen, part of lot three, what is that being used for?

A. That is a sand pit at Rio being used constantly.

Q. Mr. Carter, coming to Palm Beach County, we

find a strip marked yellow lying south of Fourth Avenue on the map, will you explain what that is used for?

A. That is a spur track and is used for unloading bridge material and the material used in the repairs of Lake Worth bridge. That is used for private cars. That track is used for private cars also and for our camp cars, and for private cars during the winter season and we unload bridge material there.

THE COURT: Where is this?

A. At West Palm Beach.

Q. The spur track is shown on the right of way marked in red there is it?

A. Yes.

Q. And the yellow represents lots north of the spur track?

A. This is the one you have reference to, the one adjoining Fourth Avenue?

Q. Yes.

A. Yes, sir.

Q. We find in the valuation list that block fifty-three of the town of West Palm Beach is valued as belonging to the Railroad Company, I believe that shows it has been sold to the Model Land Company, is not that so?

A. Yes, sir.

Q. On your map of Palm Beach County we find a reservation in yellow as Selerno, what is that used for?

A. Station ground. This larger yellow is the station ground and the smaller yellow is the station houses. The station house ground.

Q. What is the size of those station grounds?

A. Fifty feet wide and fifteen hundred feet long.

Q. On each side of the track?

A. Following the main line.

Q. What size station is Selerno?

A. By that you mean the building?

Q. No, what size place is it?

A. On paper, it is about I should say three or four hundred acres.

Q. How many people are there?

A. I think there are seven.

MR. ABRAMS: I object to that, that is immaterial if the Court please. The Railroad Company put this station and uses it for another purpose. It is immaterial what the population is.

THE COURT: It may have some bearing upon the importance of it.

MR. BOGGS: He says there are only seven people there and they have got five or six acres of space ground.

A. No, no, don't misunderstand me. I said fifty feet wide and sixteen hundred feet long.

Q. How many acres would that be?

A. It would be a little less than two acres.

Q. Now, going to the city of Miami, what are the dimensions of terminal wharves as shown on your plant?

A. Seven hundred by four hundred, that is, in round figures.

Q. Do your records show the property lying between the terminal wharves and Second Street as belonging to the railroad company?

A. They do not, no.

Q. Do your records show the property lying between the wharf and Seventh Street as belonging to the railroad company?

A. They do not.

Q. Do your records show a strip of land lying along Biscayne Bay from Seventh to Twelfth Street belonging to the railroad company?

A. They do.

Q. What use is the railroad company making of this strip between Seventh Street and Twelfth Street?

A. They are leasing privileges, have leased the privileges to various people to occupy them with boat houses, boat landings and so forth.

Q. That is the only use they are making of it?

A. So far as I know.

Q. Are those boat houses that you speak of along that strip from Seventh Street to Twelfth Street used in connection with the railroad company?

A. Not in connection with my department.

Q. Has the railroad company got any tracks on that strip?

A. No, sir.

Q. How far is that strip from the main track of the railroad company?

A. By that question, do you mean the main line or the spurs to the—

Q. Main line.

A. Possibly twenty-four hundred feet.

Q. What intervenes between that strip and the main track?

A. City blocks and houses in the city of Miami.

Q. How far is it from the north end of that strip to the spur tracks going to your terminal wharf?

A. It is approximately four hundred feet to the station platform.

Q. Those boat houses that you speak of are for pleasure boats are they not?

A. Yes, sir, I have no personal knowledge of that at all.

Q. There is a club building on part of it, isn't it there?

A. I understand so at the lower end.

Q. Does your records show any lots owned by the railroad company in block seventy-seven north of the city of Miami?

A. They do not.

Q. What lots in block eighty-six that your records show is owned by the railroad company?

A. It shows lot ten of block eighty-six.

Q. Then, according to your records the railroad company does not own lots, eleven, twelve, thirteen and fifteen of that block?

A. Not according to my records.

Q. What lot do your records show is owned by the railroad company in block ninety-seven, north?

A. Lot ten and fifteen in block ninety-seven, north.

Q. Then, according to your records the railroad company does not own lots eleven, twelve, thirteen and fourteen of that block?

A. No, sir.

Q. Did your records show any lots owned by the railroad company in block one hundred and six, north?

A. They do not.

Q. According to your records, the railroad company owns lot ten of block eighty-six and ten and fifteen of block ninety-seven in 1907?

A. No, sir.

Q. According to your records, does the railroad company own a hundred on Thirteenth Street in the city of Miami, north?

A. No, sir.

MR. ABRAMS: Is that street closed there (indicating)?

A. It is not according to this plat.

MR. BOGGS: Does the company own the west part of block one hundred and twenty-four?

A. Not according to my records.

Q. Does it own the west part of the south half of block one twenty-three?

A. Not according to my records.

Q. Does it own between the north half of block one twenty-three and half of block one thirty-seven?

A. It owns in between those two points between the two, but as to that I don't recognize it. It don't correspond with the map.

Q. Does it own any part of Eleventh Street?

A. We own the right of way, we bought a part of Eleventh Street at the crossing of our track.

(That's all.)

(Witness excused.)

Thereupon the witness, Mr. Kirtland, was recalled, and having been previously sworn, testified as follows:

MR. KIRTLAND.

Cross-examination.

MR. NEEDHAM: Q. You have prepared the statements requested yesterday?

A. I have.

Q. Your first statement is headed, "Statement of tonnage and revenue of shipments forwarded from points Jewfish Creek and Knights Key," exclusively, for the year ending June 30, 1911?

A. Yes, sir.

Q. It is a correct statement as taken from your books?

A. Yes, sir.

Q. How did you arrive at that, won't you just explain?

A. It was taken from the ledger or Accounting Department and reports furnished by them to our Department each year for all business handled.

Q. Do those reports furnish each station?

A. Yes, sir.

Q. And they are charged up for the year?

A. Yes, sir.

Q. And this is taken from those annual statements as appearing on your books?

A. Yes, sir.

Q. This shows the tonnage originating at each of the stations?

A. That shows the tonnage shipped by our line from each of those stations.

Q. Originating at each station?

A. Yes, sir.

Q. And the amount of revenue received from the tonnage?

A. Yes, sir.

Q. This is the total amount regardless of its destination?

A. Yes, sir.

Q. It is not, I presume, possible to tell how much of this went beyond Jacksonville?

A. No, not from those records.

Q. It simply shows the amount of tonnage and the amount of revenue that you collected regardless of the mileage and destination?

A. That is correct.

Q. The item with reference to Knights Key, that includes all freight received from the boats from Key West and Cuba?

A. It does.

Q. Transferred to the railroad company at that point?

A. Yes, sir.

Q. Now, does this tonnage include your own material for which you make the charge?

A. No, no company's material included in that.

Q. This is exclusive of any company material entirely?

A. Yes, sir.

Q. I see by this statement that the largest tonnage and the largest revenue was from Knights Key, that is because of the transfer from the boat?

A. Yes, sir.

Q. Was there during that period very much freight that originated at Knights Key from that key as distinguished from the revenue of the boat outside of your own material?

A. I should say not.

Q. What was the principal traffic from Marathon? In what did it consist principally?

A. Well, Doctor, the reports that we have don't show the different commodities, it simply shows the number of pounds under each class, and it seems to be very generally distributed over all classes so I was unable to determine from that report any particular commodity in any large quantity. It seems to be pretty generally distributed.

Q. Do you have any personal knowledge of it as to what it consisted of?

A. No, I don't know of any particular commodity that is shipped from Marathon.

Q. I want to get at, if you know, what the traffic consisted of that originated there, was it fruit or vegetables?

A. I don't know, Doctor, and you will notice it is only four hundred dollars for the year.

Q. Take it from Grassy Key, do you know anything about what originated there in general terms?

A. Yes, that is principally all fish, that appears under class "P" and we know fish is what is shipped from there.

Q. With reference to the other intervening stations there, what principally does it consist of?

A. Well, I don't know of anything that is shipped, it must be just little shipments shipped by the natives to friends.

MR. NEEDHAM: I would like to have that marked as an exhibit.

Q. Your next is a statement of a tonnage on revenue for shipments forwarded from Key West, Florida, January 22d, to March 10, 1912, inclusive, can you state in a general way what that consisted of?

A. Oh, it was general merchandise and a few cars of fish.

MR. NEEDHAM: Let that be marked up as an exhibit also.

Q. The next is a statement showing earnings from Key West to Jacksonville in handling pineapples from Havana, Cuba, destined from point named, these points being Cincinnati, Chicago, Kansas City and Cleveland; let that be marked as an exhibit also.

Q. At what points south on the line of fruit and vegetable trains made up?

A. Well, that varies, Doctor, depending on the different movements. Now, during the vegetable season we start one train from Key West and that comes up to Miami and brings all the vegetables originating south of Miami and from Miami we start out our regular and extra trains to pick up the additional stuff that originated at Miami and north so that on the vegetable business there in one train that

comes in and brings the vegetables from south, but the majority of the trains start from Miami.

Q. Do you mean one train brings it up?

A. Yes, sir, that is sometimes if the business is heavy we run an extra from Miami down there to take up the additional, but ordinarily one train into Miami will handle it except during the height of the season.

Q. That is your regular freight train that goes through?

A. Yes, sir.

Q. You stated yesterday that there was no growth of fruit or vegetables with the exception of the line south of the main land, as I understand it, now will you describe in your way, the density of the traffic on your road from Homestead, north, in both directions, can you give us an idea of the density of this traffic, I mean the freight traffic.

A. What do you mean by density?

Q. The amount of it.

A. Well, it depends on certain seasons. Now, from Hypoluxo to Homestead during the vegetable shipping season the traffic is very dense. It goes in such a rush that everything around there is very busy and everything is just as busy as it can be for a period of about sixty days. The balance of the season there is practically nothing done there. That is in the vegetable territory and there is some fruit from the Miami section and south. Then we don't have anything scarcely from Hypoluxo until we get up to Stewart, when we reach the pineapple territory there, but from Stewart up to Viking, a distance of about twenty-five miles, and there the same conditions exist through the pineapple shipping season. And then after we get north of there we have practically nothing until we get to the Indian River section where the oranges are grown, but it is not as congested as the district over our line of the pineapple section Viking to Stewart. It is very congested in there, the pineapple shipping season. The

stations are right close together and everything is as busy as it can be and the same condition applies in the vegetable shipping section from Hypoluxo to Homestead, practically all the way, there is very little between the places.

Q. Can you state what the number of freight trains each way during the year, excepting the dull months of July, August, September, October and November, how the trains, the size of the trains that are run regularly?

A. Both north bound and south bound. Well, I can tell you only in a general way, Doctor. Ordinarily we run south bound during the months that you speak of two trains every day, and ordinarily an extra train three or four times a week to take up the accumulation, as we always figure on Sundays to clean up everything so that we can start out in the new week fresh, and ordinarily that would be an extra train about four times in a week, but I had occasion to get up some other records for another matter in January and February, and I found that we ran fifty-nine extra trains in the two months, which was practically three trains a day instead of two. In other words, running an extra train practically every day. Now, that is practically true of the south bound movement.

Q. That is to Miami, or Homestead?

A. To Miami. The north bound movement ordinarily begins the first of October. We run the local north, of course, every day, and ordinarily one extra train just about up to ten days before Thanksgiving when the oranges begin to move heavy for the Thanksgiving trade, then we frequently have to run extras to clean it up. And that generally runs through and then there is a let up in January for February, and then beginning about March to about the tenth of March, ordinarily the vegetables begin to move in sufficient quantities to make it necessary to handle an extra for handling that business, and by the latter part of March they are so busy you have

to put on several extras every day, and that last about until the 10th or the 15th of May, and then there is a let up from that until about the first of June, and then the pineapple business begins to come heavy and we have to put extras on the line until about the 4th of July.

Q. From Miami to Knights Key and down to Key West, you say you run one regular train. How large is that—each way, I suppose, is that right?

A. Yes, sir.

Q. How large a train is that outside, now, of the extras you have to put on in the vegetable district?

A. Well, it is usually a full train.

Q. What do you call a full train?

A. From forty-five to sixty-five cars.

Q. I notice in your annual report to the Interstate Commerce Commission a ratio of operating expenses and operating revenue on your road last year was 62.24 per cent, that is a very low ratio, is it not?

MR. ABRAMS: Does that pertain to your department?

A. No, sir.

MR. ABRAMS: I object to that.

Q. Are you familiar with the operating expenses of the railroad?

A. In a general way.

Q. Do you know in a general way what the ratio of the operating expenses and the operating revenues run?

A. Yes, sir. In the southeastern territory where I am more familiar it usually runs from about sixty-eight to sixty-nine per cent, is my understanding.

Q. Speaking generally over the country it runs generally from sixty-five to seventy per cent?

A. That is my understanding.

Q. Your ratio then of 62.24 shows a very economical operation.

MR. ABRAMS: I object to that because it calls for the opinion. I don't think I should allow this testimony to go in.

(After informal argument.)

Q. Read the question.

(Question read to the witness.)

A. Well, I don't think I am competent to express an opinion on that.

Q. In referring on cross-examination to the gross revenue from a car from Miami to Jacksonville at seventy-eight dollars, that was a car of oranges as I understand it?

A. Yes, sir.

Q. And was figured on the orange rate?

A. Yes, sir.

Q. Have you a tabulation of the per ton mile upon a car of vegetables based upon the new rate provided for in the present order of the Commission?

A. I have.

Q. What is that per ton per mile?

A. It figures 2.02 mills per mile.

(That's all.)

Cross-examination.

MR. BOGGS: Q. Now, Mr. Kirtland, what is your car load minimum on Cuban pineapples by way of Key West?

A. Two dollars and fifty cents a crate?

(That's all.)

Re-direct examination.

MR. ABRAMS: Q. You have put in evidence here a writing that you say represents the proportion you received on shipments from Cuba of pineapples to points west; I see you have Cincinnati 21.4 cents, Chicago 16.7, Kansas City 17.5, Cleveland 16. Is that an excess of the two and a half cents you receive?

A. No, that includes it.

Q. Now, then, your rates for pineapples by the

Interstate Commerce Commission was based from Jensen as a central point, was it not?

A. Yes, sir.

Q. Now, nearly all these pineapples are shipped in car load lots, are they not?

A. Oh, yes, the bulk of the movement is in car load lots.

Q. Now, then, what is the rate from Jensen?

A. To where?

Q. Well, to Jacksonville, what is the rate to Jacksonville?

A. To Jacksonville is eighteen cents per crate.

Q. Then, on a through rate in train load shipments, you get three and a half cents more—you get 21.4 cents per crate?

A. Yes, sir.

Q. That is a higher rate than from point of production from Florida, is it not?

A. It is higher than the rate we receive from Jensen to Jacksonville, yes, sir.

Q. As present rate.

A. Yes, sir, since it was reduced by the Commission.

Q. Now, Chicago we find 16.7, that is 1.3 of a cent less than you get locally from Jacksonville to Jensen?

A. Yes, sir.

Q. At Kansas City 17.5 would be only five-tenths less than you receive?

A. Yes, sir.

Q. Cleveland 16 would be two cents less?

A. Yes, sir.

Q. Now, I think you testified yesterday to the fact that this Cuban shipments it was all by train load shipments, no pick-ups or anything of the kind?

A. Yes, sir.

Q. Just one consignor and one consignee?

A. Yes, sir.

Q. A whole train load?

A. Yes, sir.

Q. There is then very little difference in the actual amount you receive?

A. Very little difference in the actual money received.

Q. But a great deal of difference in the expense of handling?

A. Yes, sir, it is much more expensive for the same distance.

Q. Now, take this report as a statement of attorney's revenue on the extension from Jewfish Creek, isn't it a fact that it was not until 1908 that you commenced operating at Knights Key?

A. Yes, sir.

Q. Now, when did you commence operating from Miami to Homestead?

A. My understanding is the records show it was in 1904 but I was not with the company.

Q. Were you with the company in 1907 and 1908?

A. I went with them in 1908.

Q. Is it not a fact, Mr. Kirtland, that in 1908 in a proceeding in a case of the Trust Company of America vs. the State Railroad Commission, after that road had been running three miles of Homestead it was shown, I think you testified, that the earnings between Miami and Homestead was so small that the gross would not pay the wages of an agent for the three years run to that point, it would not pay the wages of an agent, do you recall that?

A. I did not testify to that meaning.

Q. Do you remember what the business was for the two or three years that you run through that place?

A. There had been very little development in the Homestead section, it has only begun in the last two years. The difficulty was further north, they desired to get the tomatoes in the market in the winter months to be further from the frost, induced a great many people to go south of Miami and year before last was the first year where we have any heavy acreage. Prior to that the movements were very small.

And last year, the acreage south of Miami and the Everglades land was over thirty-two hundred acres, which was about thirty per cent of the average acreage for the whole line. This year it is a little more, and it is only two years that the development has increased.

Q. Has the acreage increased this year for vegetables ?

A. Very little, it has increased. I had the figures with me yesterday but it is only about six hundred acres. I had the actual figures here yesterday.

Q. Most of the increase was south of Miami, then ?

A. Yes, sir.

Q. Is it not a fact that south of Homestead, at Detroit, there is a great deal of development going on now ?

A. At Detroit, there is.

Q. How is it south of Detroit ?

A. Well, a little south there may be, but we call Detroit south as far as the development goes.

Q. How far south does that land extend ?

A. Oh, I would say a half a mile or a mile.

Q. What is that development that is going on there ?

A. It is the development for trucking. The raising of vegetables.

Q. Any fruit ?

A. Not very much.

Q. This statement of tonnage from Key West, of course, is only since January, January 22d we had attempted to do any business.

A. Yes, sir.

Q. Have you had time to regulate your rates generally into Key West ?

A. We have not. And we have made no efforts so far and we have included no freight so far to handle any traffic or to take any traffic away from the steamship line. We are in communication now to increase the business to get it for the rail haul, but we have not concluded it yet, and have not handled any of that business.

Q. You have nothing to do with the Passenger Department, have you?

A. No, sir.

Q. Since you run from Key West what has been the average of the passenger traffic?

A. Oh, it has enormously increased. If it has not been for our passenger business this year we would have been badly in the hole. The passenger business is the only thing that saved us this winter. The trains ran down there full.

(That's all.)

Cross-examination.

MR. NEEDHAM: Q. Referring to the growth around Homestead the gardeners did not start to truck farming until after the road was put in because they could not ship, that is a fact, isn't it?

A. Well, I was not there when the road was built there, but I presume that was true.

Q. It was opened in 1908, wasn't you there at that time?

A. The Homestead was in 1904 you remember.

Q. And that development of fruit that you refer to, what is the fruit that is developed there?

A. Grapefruit.

Q. How long does it take to bring it to bearing?

A. Four years.

Q. Did you make exhibit eleven attached to the petition?

A. No, sir, I did not.

Q. You don't know how that was made up.

A. I have not seen it, let me see it.

Q. I call your attention especially to the item "Earnings June 30, 1911." Homestead to Knights Key five hundred and ninety-five thousand, two hundred and seventy-seven dollars and eighty cents. You make that up?

A. No, sir I did not.

(That's all.)

Thereupon at twelve o'clock and forty-five minutes P. M. Court was adjourned to be resumed at two o'clock and thirty minutes P. M.

Thereupon at two o'clock and thirty minutes P. M. Court convened pursuant to adjournment.

Thereupon the witness, Ben Carter, was recalled and having been previously sworn, testified as follows:

BEN CARTER.

Cross-examination.

MR. BOGGS: Q. Mr. Carter, at Beerfield, there is a sand pit there of twenty-five acres, isn't there, on the north side of the river?

A. Yes.

Q. Now, in addition to that there is a section house lot of 90.1 of an acre and then there is five acres more, isn't there?

A. Yes, sir.

Q. Isn't Beerfield a very small place?

A. I don't recall the five acres, will you show me the sketch. We have additional right of way there for station ground and there may be five acres in it. I never figured it up that way.

Q. Beerfield is in Palm Beach County, isn't it?

A. Yes. I don't know whether this is five acres or less, it is embraced in a little triangular strip on the east side that has the four section houses on it. The section houses lie like this from the station on this side (indicating). That is quite long taking it altogether, but not wide. For instance, from the section line south it is about eighteen hundred feet on the east side, it is in a little triangular strip on the property line running out one hundred feet and then going down and following parallel for station ground

and that on the other side is a strip twenty-five feet in addition to our right of way for the purpose of giving an approach to the side track, a better approach to the side track, making it seventy-five feet wide on the west side from the center of the track leaving about fifty feet for the approach to the side track.

Q. There is a good deal of that that is not occupied, isn't there?

A. Well, it is used from time to time, Mr. Boggs. You know when a man drives down in there, there is another man at the car, he must drive around and there must be more room for more than one team to go there to get sand. For one team to go there, that twenty-five feet is more than is necessary, but when several teams are loading there there is not room for a man to drive in there and we had to secure that additional twenty-five feet for that purpose.

Q. I mean the five acres on the east side of the track?

A. Why, it is in section shape, it figures up in acres, but it is practically all occupied. We have our buildings on the north end of it and then comes the station building at the station ground. I don't remember how far south of the grounds that property line worked to. We are not using it for any other purpose than railroad purposes however, but—

Q. But are you using all of the ground you have around the station at Palm Beach for railroad purposes?

A. Yes. We are using all of it.

Q. And none of it unoccupied?

A. Why, if you call the park which we have for beautifying those grounds east of the station, between the "Y" it would be unoccupied ground, but it is occupied by and used in flowers and plants and everything of that kind as a part of the station ground, and the driveways are in the middle of that leading up to the station.

Q. What is the size of that park?

A. I don't know without measuring it up. I can't tell you exactly. I can give you approximately if you will let me have the little sketch. Well, it is a triangle which will have to be calculated, it is about seven hundred feet on each of its three sides. If you take in the park that was marked here (indicating) and was a part of the right of way property, if you take simply the track, it is a triangle of about four hundred and fifty feet on each of its three sides. And through the middle of that park runs a driveway about forty feet wide leading up to the station building.

Q. Can you give some idea of the extent of the reservation at the present passenger station in Miami, which is at present unoccupied?

A. Which one do you mean, Mr. Boggs, the one down at the terminal station, you mean the passenger station at the terminal station?

Q. Yes, sir.

A. Well, all there is practically next to the track, there is a space there thirty-five feet wide, the whole length. At the west end there is a big building used by the Express Company, at the other end is the passenger station and the balance of the ground of the passenger station and the Biscayne ground and the passenger station is in a park. That park lying west of the passenger station and the street on the west of Avenue Key is all a driveway for teams to come in there for the delivery of passengers and the getting of passengers.

Q. Can you say about how long that track is?

A. On the east, speaking from memory as I see it in my mind, I should say about two hundred feet east of the station to Biscayne Drive. I don't know, it is just exactly, but it is about two hundred feet. And it is very nicely fixed up.

(That's all.)

Re-cross-examination.

MR. NEEDHAM: Q. Mr. Carter, over what part of the line does your jurisdiction extend?

A. To Knights Key and all the branches, all the branches and all the main line.

Q. To Knights Key?

A. Yes, sir.

Q. You heard me call Mr. Kirtland's attention to the return of operating expense, operating revenues, that is returned; are you familiar at all with the experience of cost in that regard?

A. Not at all. I never made any study of that.

Q. I see in the report of 1911, of June 30, 1911, of the Florida East Coast Railway Company, maintenance of way and construction, and construction is put in the total as five hundred and fourteen thousand two hundred and forty-two dollars and ninety-four cents, of that thirty thousand six hundred and fifty-one dollars, is in superintendent, will you please explain in a general way what that includes?

A. That includes the officers, includes myself, my engineering department, my supervisors of buildings and bridges, with his clerks, the roadmaster with his clerks and my office force, the accounting force and other expenses, distributed in accordance with instructions from the Commission.

Q. Just in a general way, that is what I want to know. I noticed the item for ties last year was seventy-four thousand seven hundred and thirty-one dollars and the rail item is three thousand two hundred and sixty-three dollars. Isn't that rather out of the ordinary proportion?

A. What was that, I didn't catch your question.

Q. Ties, seventy-four thousand seven hundred and thirty-one dollars, for that year, and the rails, three thousand two hundred and sixty-three dollars.

A. No, sir, I don't think so. Excuse me just one moment, is that item all charged to maintenance?

Q. Yes, maintenance of way and structure.

A. No, sir, I don't think so.

Q. What is the mileage that is under your directions, that is, taking the total mileage from—

A. Well, there would be five hundred and eighty-three miles which should be embraced in that, through to Knights Key.

Q. The question I want to ask you is whether or not the item for ties there on your main line of mileage is not out of proportion to the amount of rails, the rails being only three thousand two hundred and sixty-three dollars?

A. No, sir, but to that must be added one hundred and fifteen miles side tracks, you see. The ties went into that, making six hundred and ninety-eight track miles that must be taken care of.

Q. Wasn't it rather out of proportion for the amount of steel that you bought for repairs?

A. Well, I don't think you can compare the number of ties used in repairs and the amount of steel bought for repairs because our steel will last fifteen or twenty years, while our ties only last at the maximum for seven years. In some sections they give out in five years.

Q. You would not say that that was at all out of proportion.

A. No, sir.

Q. Did it or not indicate that there was an unusual large amount of ties put in last year?

A. No, sir. May I say something in connection with that to show you? Last year my ties was two hundred and sixty-one thousand ties by actual count that are in for this year. The year previous to 1911 I was obliged to furnish for my stock to the extension south of Knights Key some of my stock of ties that should have gone in in 1910, and not getting those ties and putting them in in 1911, hence, for that one year it would be larger or a little above the average.

Q. The total expenditure for right of way and tracks is two hundred and thirty-eight thousand four

hundred and seventy-nine dollars and fifty-six cents, bridges and trestles, sixty-two thousand nought forty-four dollars, is that item normal?

A. That is about normal.

Q. About as it runs here?

A. Yes, sir.

Q. Buildings and houses on ground I see sixty-one thousand two hundred and seventeen dollars, is that normal?

A. Yes, sir, about the same.

Q. That is about the way it runs each year?

A. Yes, sir.

Q. I see that your total for maintenance of way and structures is practically twenty per cent of the operating expenses, that is low is it not as compared with other roads, that is a low percentage?

A. I really don't know how to put that in shape. I followed it up on the main line on a mileage distribution or basis, and taking the miles into consideration and characteristics of my structures and road beds, I have prided myself on doing better work than many of my friends do.

Q. My attention is called to the fact, Mr. Carter, that the siding and spur tracks come in under expenditures, and betterments are not included in this item.

A. Construction is not included in that.

Q. Coming to these side tracks that are for the benefit of the fruit growers and packers, they are all upon your right of way with this one exception that you speak of?

A. Well, for the Garby, I don't recall to mind any other one but that one. There are others running out for other purposes.

Q. I am speaking of the fruit growers and vegetable growers.

A. Yes, sir, I don't recall to mind now.

Q. How long would these sidings average?

A. Why, I don't know. In constructing them they are all sorts of lengths. Anywhere from five

cars to twenty cars, that is accommodation side tracks, that would be from two hundred feet to eight hundred feet long. Some of them are even longer than that.

Q. Could you refer to the four that were in the space that we have been talking about?

A. I can furnish you, Doctor, with a list of every spur track on the road and the location of them.

Q. I don't care to go into that, I just want to know the general extent of those side tracks, could you not give an estimate of what they will average, and what the extent of the siding is?

A. Well, I will put it this way. They cost about a dollar and fifteen cents a foot on an average to construct them, then the rail and then the length of it would count, because a side track for one car would cost us more in proportion than for ten cars. My reason for the fact, that there is the same frog, the same switches, and then comes the intermediary, which cost us say, one dollar I think a foot, each additional foot. For instance, if it is one car it is forty dollars, and for two cars it is eighty dollars about.

Q. Are those side tracks to the packing houses constructed as substantially as the side tracks at the station?

A. Precisely the same.

Q. In the same manner?

A. Yes, sir.

Q. With the same rail and the same number of ties?

A. If I caught your question the comparison was with the side tracks?

Q. Yes, sir. With the side tracks and the station.

A. Yes, sir, the same rail, the same ties, the same everything.

Q. Now, where those are put in to accommodate the shippers it measures the necessity of putting stations quite as near together, does it, as it would otherwise be required?

A. I don't think I could answer that question, that

is a matter of policy with the company as to where they will establish those. I have nothing to do with that.

Q. Well, is it not a fact that the establishment of these side tracks at the packing houses for the benefit of this traffic does lessen the number of stations that are required on the main line of the road through these districts where fruit is grown?

A. I don't see that I am competent to answer that question.

Q. There is one other item I want to call your attention, maintenance of joint tracks, ways and other facilities, to what joint tracks does that item refer?

A. To some joint tracks at Palatka, joint tracks at Orange City Junction, those are connections with the Atlantic Coast Line, some joint tracks in Jacksonville with the freight house in Jacksonville.

Q. Well, is that connected with the Terminal Company?

A. Why, it is independent of the Terminal Company.

Q. Then, it is joint tracks occupied by this company and the Coast Line?

A. At their joint freight terminal in Jacksonville.

Q. And that item of five thousand dollars refers to those joint facilities?

A. Yes, sir.

(That's all.)

Cross-examination.

MR. ESTERLINE: Q. Mr. Carter, some of these side tracks at the packing houses are constructed under contracts with the shippers, aren't they?

A. Some of them are.

Q. And those that are, it is entered into on the contract by which the railroad company is to furnish the material, some of them and the labor with which to put them in, and then the packing house refunds

it on the basis of mileage, does it not? On the basis of car load lots, does it not?

A. I couldn't tell you what the arrangement is for the construction.

Q. But those are the terms under which they are entered into?

A. Some of them. But most of them are with milling concerns and manufacturing concerns, and wholesale dealers. There are a few as I recollect it at that time with the packing houses.

Q. There are some?

A. Oh, there are some, yes, sir.

Q. But you are not able to state what proportion?

A. No, sir.

(That's all.)

Re-direct examination.

MR. ABRAMS: Q. Mr. Carter, in this statement here I find it is seventy-four thousand seven hundred and thirty-one dollars and eighty cents; doesn't that simply show the amount paid out that year for ties in this annual report of the Company?

MR. NEEDHAM: It shows on its face.

A. I would say approximately so.

Q. Well, now, that wouldn't indicate one way or the other what the ties were put on the road for in one year, would it?

A. No, it would indicate what they cost that year.

Q. Yes, the new ties you bought that year and paid for.

A. Allow me to correct that. That would indicate the ties that were actually used, actually put in the track.

Q. It would, eh? And not the amount of cash paid for the ties that year?

A. No, sir, under our system of accounting everything that is bought for the Maintenance of Way Department is charged to my department and nothing goes to the auditor's books until I shall have

reported it used. The difference is carried in stock. I think that we are the only road that does it that way.

Q. Now, in answer to the Government petition to this case, it is alleged that these spurs and sidings are constructed cheaply to avoid the expense of constructing permanent sidings; is that true?

A. No, sir.

Q. I want you to explain to the Court, Mr. Carter, these places here on this map, Mr. Carter, has reference to the stations and not the spurs, don't they, special sidings, don't they?

A. I don't think there is any spur or sidings shown there at all. I haven't looked this over very carefully, but those are all stations so far as I can notice. No, sir, there are no spurs mentioned in this list at all. These are all stations.

Q. These are the recognized stations?

A. Yes, sir.

MR. ABRAMS: I put in evidence map of the road showing the stations that are on it.

Q. That shows how many stations have been established between Jewfish and Key West including Key West?

A. It gives twenty-one of this card and that is correct so far as my memory serves me.

Q. And that is all on the main line?

A. Yes, sir.

Q. On a distance of how many miles. Twenty-one stations all on the main line for how many miles?

A. One hundred and five miles.

MR. NEEDHAM: Between what points is that?

MR. ABRAMS: Between Jewfish and Key West.

Q. That is an average of a station every five miles on the main line?

A. Yes, sir.

Q. Can you state without counting the aggregate number of stations from Jacksonville to Jewfish?

A. I will have to count that, Major. There are one hundred and twenty-three.

Q. In how many miles?

A. Four hundred and seventeen.

Q. That is less than a station to every four miles of the road, ain't it?

A. About three and a third miles.

Q. To each station?

A. Yes, sir.

Q. Do you know of any roads where the stations are located closer together?

A. No, sir, I don't know of any.

Q. Mr. Carter, you have been asked by the Assistant to the Attorney-General with regards to washouts and have stated as to one washout that occurred for six miles of your embankment, something of that kind?

A. Yes, sir.

Q. Is that the only washout you have had on the line of that road?

A. Yes, sir.

Q. Is the line of your road subject to storms of any kinds?

A. Always.

Q. What effect has the storms on the land?

A. Where does your question apply, generally, or to one part of the road?

Q. You can name any part you want to.

A. Well, in the northern part of the road where we have high water the sand washes away very quickly. It melts away, and especially if the water is hot, and in the spring, it comes up and runs over and breaks through the grass which we permit to grow and laps it down. If you take it south of Homestead between there and Key West the hurricanes do terrific damage in various places.

Q. No, I am speaking of your road beds between Homestead and Jacksonville and the branches north of Homestead.

A. All over the entire road north of Miami when the waters get up. When they get up to what we call flood stage, they wash out badly in some places and

in some places not so bad. One place north of Titusville I have had that entire stretch through the marshes seven or eight miles wash down and the banks there are four or five feet high, and I have had other places where it would be several hundred feet long in extent.

Q. Now, take in that pineapple region, isn't the sand very light?

A. Yes, sir.

Q. Well, does the wind ever have any effect in blowing it?

A. It blows it about very much like dry snow in dunes, and in the same way these dunes are built up and will drive it out from the coast precisely the same way. Of course, our workmen keeps that from covering the road up. That is kept off by the section men.

Q. You were questioned by Mr. Boggs, I think, in regard to sixty-eight acres in St. John's County; is that land held by the railroad company for railroad purposes?

A. It was what I was told it was purchased for and what I fixed it up for.

Q. Now, in regard to this hospital, you say the hospital is the only building on the square of this lot?

A. No, I didn't say that exactly, I didn't mean to. There is a dwelling house way down in the northeast corner of it.

Q. Why are there no other buildings on that lot, do you know, can you state?

A. When the west end of the block was selected for the hospital, it was the desire of the manager that the hospital should be put as far away from the factories as we could possibly put it, for the convenience of the people in the hospital.

Q. It is for the safety and convenience of the patients in the hospital?

A. Yes, sir, in the hospital.

Q. Now, Mr. Carter, have you got a list of the

lands that you failed to find in these valuations on which you say are used for railroad purposes, I want to know what that amounts to.

A. In the aggregate? I couldn't make that statement unless I referred to these exception lists that I have got made.

Q. Now, what are those; can you state what those lands are that you use for railroad purposes that were not given in our list?

A. I could I think by being permitted to look over the list here. Now, here at Almond, in Volusia County, is a list that has been transferred to the Model Land Company, and the values as you have them are set opposite the names there.

Q. Those have been taken out of the railroad?

A. Yes, sir, out of the railroad entirely. Here is a list in Brevard County that has been taken out of the railroad and the values are shown which you see have been shown here. That has been sold to the Model Land Company. There are in Duval County some lots in South Jacksonville, which our records don't show the lots at all.

Q. Well, I can make inquiry concerning that from the other officers of the company.

A. Yes, sir.

Q. Now, on those maps, as I understand you, all the blue marks indicate land purchased by the railroad company for railroad purposes since 1907?

A. Yes, sir.

Q. Mr. Carter, if the railroad company own land for railroad purposes and have not turned them over to your jurisdiction, you would know nothing about it until it was turned over or placed under your charge?

A. No, sir, and they frequently purchase and I know nothing about it until several years after. Until they have occasion to turn it over to me.

Q. Then, the facts, with the exceptions you know of there is not evidence that they don't own those lands and hold them for railroad purposes?

A. No, sir.

Q. You have been questioned as to the number of these sand pits, is it not necessary for you to have them at stated intervals on the line of the road for convenience and economy in moving sand as you want it?

A. Yes, sir.

Q. Then, the fact that you have enough of them don't indicate any extravagance on your part at all?

A. Not at all. I am trying to get more.

Q. Is it not a fact that it tends to economy?

A. Yes, sir.

Q. Now, Mr. Carter, in going over these lists, did you make a careful examination as comparing with the testimony as to values?

A. No, sir I made no calculation on values.

Q. Oh, no, I am speaking of the land itself. Did you go over your records and the description of the land in the testimony of the values, you made a careful comparison as to the land, right of way and the like?

A. Yes.

Q. Those you have testified concerning are all you can find in the values which are not contained in your records except those you have testified to, these are all you can find?

A. Now, I want to put myself right on that. I testified once to the fact that these lists and that checking was done by the employees in my office who had charge of the land matters.

Q. That is Mr. Pomar?

A. That is Mr. Martin, and I didn't personally check these exceptions myself, but I have to assume the responsibility the same as any other man for information that comes out of his office.

Q. Well, these were all that were found?

A. These are all that were found, or that were reported to me.

Q. And some of these lands were taken from and deeded to the Model Land Company?

A. Yes, sir.
(That's all.)

Re-cross-examination.

MR. ESTERLINE: Q. You spoke about stations when you were counting the number of stations on a certain distance of the road, what do you mean by stations.

A. By a part that is recognized as our time table, as a regular place for the train to stop.

Q. And that is what you call a station?

A. Yes, sir.

Q. It doesn't necessarily follow there is a station building.

A. Yes, and it is indicated on the time table and is scheduled, some of them for all trains and some only for the local trains.

Q. But any train that stops at any place at a certain time, it is called a station?

A. Yes, sir.

Q. It doesn't necessarily follow any building or improvement or anything there? Except for freight and passengers.

Q. There is one other question, that fifteen miles of spurs you spoke about, and four hundred and ninety miles of main line, do you recall the spurs including all the spurs to the mills and sidings and matters of that kind?

A. Yes, included the mileage altogether, included side tracks, station tracks, traffic tracks and spur tracks.

(That's all.)

Re-cross-examination.

MR. NEEDHAM: Q. When was this extension, when was it open to Knights Key?

A. In February, 1908?

Q. Since that time what has been the result so far as maintenance is concerned on that line down to Knights Key?

A. Well, we have had in that time hurricanes which wiped out long stretches of embankment.

Q. How much?

A. Why, I don't know as I could answer it in lineal feet, but, for instance, between Upper and Lower Metacombe, there was a mile washed out, and between Long Key and Knights Key, the approach on the south of it, the north end, several hundred feet of it was wiped out of existence as though it had never been there.

Q. Took the track with it?

A. In some places.

THE COURT: Q. Do you have those hurricanes every year?

A. No, sir, not every year; we had the worst in 1909 and 1910.

THE COURT: Q. Have you ever been able to ascertain the cost of that maintenance from Knights Key to Key West?

A. Not at all, because it is a chance; if the elements does not work against that the maintenance would not be but a little more than ordinary. It would not be more than the paint of the bridges, girders, steel girders, that must be sometimes scraped and painted. The viaduct and the concrete work I don't expect to have so much to do with that.

THE COURT: Q. Where in your experience have the hurricane damages been the greatest, in the keys or in the section between the keys, or before you get on the keys, or where?

A. Judge, it was all over, everywhere.

MR. NEEDHAM: Won't you describe the construction of Knights Key?

A. The viaduct, it is a concrete arch construction fifty feet clear span, a true arch, and it has from the underside of the arch to the swinging or water

line it is twenty-five feet. In other words, the radius of the arch is twenty-five feet, and the piers upon which these arches rest we just sink the cofferdam and clean all the sediments from the rock and then drive the piling into the rock, and then after those are driven in, there are put twenty-five of them in one of these big piers and then after that is done the arches are laid just as they are laid any other place. Then we put the reinforced concrete ceiling there, also using the same quantity of concrete. As a protection against the beating of the waves against the side of it.

Q. They were constructed then not only for the purpose of carrying the load, but for resisting the waves and the storm pressure.

A. Yes, sir, and everything that could come up.

THE COURT: Q. Mr. Carter, have they shown any defects so far?

A. Not a bit. I can't find any destruction of any kind except on one pier where there was a little chip off the corner caused by something rubbing against it.

THE COURT: Q. What do the engineers think as a future for that viaduct as to the ordinary long life of it?

A. There is no extent whatever in connection with it. With the cost of the concrete viaduct. We have no records anywhere of any concrete that ever gave way for discontinuance by the action of frost or fresh water.

MR. NEEDHAM: Q. How many of those arches are there and what is the length of them?

A. That length is just a little shy of two miles now, but four is to be added on to that.

Q. How many arches are there?

A. I have forgotten, but I think it is about fifty in that two miles.

Q. Can you give us in any way a description of the construction from Knights Key to Key West, forty miles?

A. Well, I can, yes, sir. They start in with what we call a steel girder, on a concrete pier. Those piers are built up in the same way that I described for the starting of the arches, by the driving of caissons or a cofferdam and the cleaning out of the rock and the driving of pilings and then building up on the concrete to the required height, and then those are on eighty-feet spans, and then what are known as the big girder of eighty feet in length and about six and a half feet in depth, and the ties and rails are placed on top of those girders. That class of construction extends to Bahia Honda, where they have got a number of spans. How many or what length there I can't say, but there is one two hundred and fifty feet swinging draw in there. The whole length of that opening is about seven miles. Then, I am not familiar enough with the islands to call them by name, but I will say there are other concrete arches there and some steel girders, and, of course, on the island is the ordinary construction from the material that the island furnishes.

Q. You mean Key West?

A. From this point that I speak of through Key West. That is to be the finished work at present, we are running on the side of where the finished road will be on wooden trestles based in a standard form, just as strong as they are anywhere on the main line. That, in itself, has called for an expenditure I can say of a million dollars.

Q. Have you any photographs of the points on that extension?

A. I have not any excepting the pamphlets. They took them away from me but I suppose I can get them. Our pamphlets of Key West opening shows a whole lot of these. And then we have a little souvenir booklet; if you have not seen any of them I will send some down. That contains twenty-five or thirty very good illustrations of that work.

Q. I should like for you to do so.

A. I will do so when I go back.

MR. NEEDHAM: If your Honor please, I would like to put those illustrations in in connection with his testimony. Just a few of them that will give us a better idea of this construction.

Cross-examination.

MR. HUDSON: Q. Mr. Carter you spoke of the track on Key Largo, Key Largo is the largest of the keys is it not?

A. Yes.

Q. How does it compare in elevation with the others?

A. I think it is a little higher, I don't remember actually but my recollection is it is a little higher.

Q. How are these keys affected in the time of the hurricane; does the water sweep over them?

A. Not over the entire line, you know. It comes up and rolls back into the basement, but it don't make a clean sweep as far as I have noticed it. The wind has blown the water and the spray clear over until it killed the foliage.

Q. How does it affect the foliage?

A. It seems to affect it the same as salt water does anywhere.

Q. Have you ever noticed the effect on limes and other citrus fruit; how does it affect those?

A. I have noticed the lime trees.

Q. Did it kill them?

A. It did not kill the tree, it makes the leaves turn brown and drop off as if a blight has been through it.

THE COURT: Q. Is Key West subject to hurricanes?

A. Yes, it gets the benefit of them.

Q. That great hurricane that swept through here in 1899, did that get to Key West?

A. I don't remember that one, but there was one in 1906 that did a great deal of damage, and in 1909, too. 1909 was the worst in many years, it washed

down many buildings, cigar factories, and the large trees down there that were a hundred years old. A great destruction of property. The water came around the edges of the island, but it did not sweep down the whole town. The wind did greater damage than the water did.

(That's all.)

(Witness excused.)

Thereupon the Petitioner to further maintain the issues upon its part produced and caused to be sworn as a witness one T. K. Barrett, who testified as follows:

T. K. BARRETT.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. T. K. Barrett.

Q. Where do you live, Mr. Barrett?

A. St. Augustine.

Q. What is your business or occupation?

A. Supervisor of buildings and bridges for the Florida East Coast Railway.

Q. How long have you been engaged in that work?

A. With this railroad, ten and a half years.

Q. What other roads have you been employed by?

A. Well, I have been with the Jacksonville, Tampa and Key West, the Florida Southern, Chicago, Burlington and Illinois, Kansas City, Fort Scott and Memphis.

Q. All in the same line?

A. In bridgework, yes, sir.

Q. Now, Mr. Barrett, your work is under the general management of Mr. Carter, is it not?

A. Yes, sir, I report to him. I have the inspection of the buildings and bridges on the road, and am held responsible for their condition. I purchase the

material and direct the movement of the board in making the repairs on these structures.

MR. NEEDHAM: If your Honor please, I suppose this is to co-operate in a part at least of Mr. Carter's testimony.

MR. ABRAMS: Certainly.

MR. NEEDHAM: At the same time we are perfectly willing to say that there will be no evidence offered on our part to contradict anything that Mr. Carter has said with reference to the structures or the bridges on the road, therefore, so far as its being cumulative it is not necessary to go into that.

MR. ABRAMS: This witness, if your Honor please, knows the difficulty of painting material in wood and our necessity for going to steel.

MR. NEEDHAM: I think we can save time.

THE COURT: You might concede them for the purposes of the case and the truth of the statement of Mr. Carter's testimony, that it is much more expensive as stated by him to get steel in place of wood, and that they are actually getting the steel in place of timber, and then to cover the testimony in reference to the cost of steel.

MR. NEEDHAM: Oh, so far as we are concerned, on behalf of the Commission I shall offer no testimony in contradiction of what Mr. Carter has stated in regard to their construction and their policy of maintenance.

THE COURT: As to the wisdom of the policy he stated was being followed.

MR. NEEDHAM: I don't know that we have to inflict any wisdom. The fact is as he has stated, and we have no disposition to question it, nor do we question it that it is the general trend and policy of the railroad to substitute steel for wood.

THE COURT: Precisely, that is what I mean by using the word "wisdom," and that it conformed with scientific modern railroad construction.

THE WITNESS: I would say that is as far as that is concerned, it is in regard to the trees which we

have to use for stringers. The large trees are fast getting weeded out, and it is more difficult every year to obtain timber for stringers and for the like.

THE COURT: What kind of timber do you use?

A. Yellow pine, seven by fourteen.

Q. Where does that come from?

A. We get it all through the State, and I did buy some in Georgia, wherever I can get it.

THE COURT: Well, isn't there a great deal of that timber left in those States?

A. Not the large timber. It takes a large tree to make a seven by fourteen, twenty-five feet in length, that will come up to a railroad specification, especially ours, because our specification is a very hard specification and a great many mills won't touch it at all.

MR. ABRAMS: You say it is getting more difficult every year to get it?

A. Yes, sir.

Q. Isn't that a notorious fact throughout the State?

A. Oh, yes, sir, it is well known.

Q. Then, in the matter of construction, in changing to steel, you are forced to do that from necessity?

A. Yes, sir.

MR. ABRAMS: Then, under that understanding, Doctor, I will—

MR. NEEDHAM: Yes, there is no use in accumulating the testimony on that point.

THE COURT: What is the life of one of those stringers in Florida?

A. About five years. Some of them will give out in three years.

Q. What do you calculate on a steel stringer?

A. If a steel stringer is well taken care of and is cleaned and painted and cared for properly, it is hard to say. It is good anyway for twenty years.

Q. I notice you put the life of your ties here from five to seven years.

A. Four to five years. We generally figure every year on renewing twenty per cent.

Q. What kills the ties here?

A. Oh, it is atmospheric conditions, the wet and the dry seasons. Railroad men in the north tell me that our same ties that we have got out here that give out in four or five years, that those same ties in the north will run them from nine to eleven years.

MR. NEEDHAM: Now while we are waiting here Mr. Barrett, you have the immediate personal inspection of all the buildings?

A. Yes, sir.

Q. Now, Mr. Carter has testified to the character of the lumber and material put into those buildings?

A. Yes, sir.

Q. From your personal knowledge of the buildings, what is their condition at the present time compared with when they were first constructed?

A. Well, I will answer that this way; we tried to keep our buildings up at all times in practically as good condition as when they were built. That is, I go over the road once a year with my assistant and the foreman of each division and make an inspection of every building, and every bridge, and I declare what material is required to put that building in good condition for a year, and then the material is sent out and put in. That is, we take all rotten timber out of it and put in new and make the notes for painting as it is required, repairing the leaks, putting in glass and doing everything of that kind so we try to keep our buildings up at all times in as good condition as when they were put up. Of course, subject to depreciation, which occurs in everything.

Q. Now, with regards to your flooring and so forth, about what percentage do you have to take out every year?

A. Are you talking about buildings now, or the platforms?

Q. Including the buildings, of course, the platform has more depreciation, but take the building.

A. Oh, I should say it would not run over two or three per cent. Now, platforms, of course, are more apt to require those repairs.

A. Oh, yes, the platform wears out, it will run fifteen to twenty per cent.

Q. You replace those every year?

A. Yes, sir, and sometimes I go over them two or three times a year. That is on account of the way they are handled, handling baggage and so forth over the platform. It will break them.

Q. Has that been your system ever since you have been on the road, Mr. Barrett?

A. Yes, sir.

(That's all.)

(Witness excused.)

Thereupon the Petitioner to further maintain the issues upon its part produced and caused to be sworn as a witness one J. R. Parrott, who testified as follows:

J. R. PARROTT.

Direct examination.

MR. ABRAMS: Q. Mr. Parrott, you are President of the Florida East Coast Railway are you not?

A. Yes, sir.

Q. How many years have you been connected with the Florida East Coast Railway?

A. Nearly twenty-six.

Q. Mr. Parrott, there was question raised as to certain items on this account, charged to Plant account in 1903, such as net earnings put into Plant, interest on capital stock, can you explain those items, June 30, 1903?

A. The first item here is recording mortgages. I presume that is recording of the two mortgages—

Q. That item of five hundred and eighty thousand

five hundred and seventy-three dollars and thirty-four cents?

A. That item and the next item of two hundred and seventy thousand dollars are practically explained upon the same ground. In 1896 when the first mortgage was made of seven million two hundred and fifty-nine thousand dollars and the stock was increased from two hundred thousand dollars to a million, Mr. Flagler took the stocks and bonds at that time at par and paid cash for them. That is, we owed him nearly that amount at that time, and it was with the understanding when he took them at par that at some future time as the progress of the road went on that that amount should be readjusted. At the time when he took those bonds I don't suppose you could have sold them on the market for forty or fifty cents on the dollar. We were not earning our taxes, let alone any interest, and he took them, I think the first mortgage was three per cent for three years, and four per cent for four years, at a time when he was borrowing money and paying five per cent for it. The second mortgage—

THE COURT: What do you mean by three per cent three years and four per cent four years?

A. For two years, making five per cent thereafter. And at the time he was practically paying for money himself, and those two items we might with equal propriety have called those discounts, but it looked better upon our books in our judgment. It was purely a matter of bookkeeping. We had already made a discount of fifty cents on the dollar on the second mortgage bond, and we put the second mortgage bond at fifty cents on the dollar. We didn't want to make any further reduction or any further discount and those two items were put in in that way. The first item of five hundred and eighty thousand dollars was really the net earnings, that is, we had used the money during the seven years from 1896 to 1903, we had taken the money out of the net earnings and bought equipment with it, machinery and

so forth, and it stood upon our books at that time as a betterment or improvement. And we charged net earnings and credited at that time that five hundred and eighty thousand dollars. And we made a further charge of five per cent upon the capital stock for the five years.

Q. Did you pay for that stock at par?

A. We paid for that stock at par, yes, sir. That was paid for at the time of the first mortgage.

Q. Has he ever received any—

A. I say he had paid for that Major, when that first mortgage was made there was two hundred thousand dollars only of capital stock and we increased it at that time to a million, so that all I am familiar with is the eight hundred thousand dollars' worth of stock paid for. Now, about the other two hundred thousand dollars, I don't know. It is prior to my time going out of our purchase of several properties.

Q. Now, you paid for that eight hundred thousand par when you first went into it, who owned the two hundred thousand dollars?

A. Yes, sir, and that two hundred thousand dollars stayed there.

Q. How many dividends has he had on that stock?

A. Well, I never presumed that he ever had any dividends. I never called them dividends. It stands on the books charged as a net earning put into the plant, and it was the readjustment of that bond purchase that that charge was made. I never called it a dividend. I don't assume that it was a dividend, for at the time that that second mortgage was made the property was not earning—I think the year before that mortgage was made the property only earned one hundred and twenty-five thousand dollars. I am not giving the figures accurate, but that is my recollection, and we had seventy-eight thousand dollars to pay for taxes out of that hundred and twenty thousand dollars, and we had the first mortgage at that time, 1903, and we had the interest

on that first mortgage to pay, so that you can see with the second mortgage of six million dollars' issue that the bonds did not have much prospect of paying a very considerable amount of that interest. Every dollar that has gone out of that property, interest or otherwise, has gone back into it through Mr. Flagler.

Q. These items we have here of 1893, the purchase of the A. & W. Railroad, one hundred thousand dollars, that was purchased with Mr. Flagler's money, was it not?

A. Yes, that covered everything that the road had.

Q. Everything the A. & W. had?

A. Yes, sir, it covered the entire purchase of the road, including buildings, right of way, and the different equipment it had. It had two engines and no freight cars, a piece of a baggage car and a coach.

THE COURT: Q. Where did that line run?

A. That was purchased in 1892 or '93. I don't just remember the date.

THE COURT: Where did it run?

A. Oh, it ran from New Smyrna to Orange City Junction, connecting there with the Atlantic Coast Line now, formerly ran to the river, a mile and a half, twenty-eight miles long.

Q. Now, how many miles is this?

A. Twenty-eight, I think.

Q. Did you not have at New Smyrna to get that road quite a lot of land?

A. Yes, we acquired some station property there, that is, the yard station ground at New Smyrna with that property, yes, sir.

Q. That road had been in operation before you bought it, had it not?

A. Oh, yes, sir, several years.

Q. Now, in this item of seventy-four thousand nine hundred dollars the Southeastern Railway, in 1903, that is the road from Titusville, from Titusville to Enterprise?

A. Yes, sir.

Q. That covers everything?

A. Seventy-four thousand nine hundred dollars, yes, sir, that covers the cost of the road. Thirty-five miles from Titusville to Enterprise, then we afterwards leased four miles from Enterprise Junction to the Atlantic Coast Line. We have a nominal lease, we have a ninety-nine year lease, and we pay the taxes and keep it up and operate it, so it is about forty miles that we got in the purchase.

Q. Now, Mr. Parrott, from your knowledge of the business, could you have built that road, that forty miles of road, laid the rails and ties and put up the station for seventy-four thousand nine hundred dollars, on that thirty-four miles of road?

MR. NEEDHAM: Now, if your Honor please, I object to that question. The item as I understand it shows exactly what they paid for the road as it then existed, and so far as the cost of reconstruction or the cost of reproduction, I can say that testimony has already been given with reference to the reproduction and value of the road. What it was worth at that time, however, reproduction has reference to the present condition, not the condition in 1903, or '04 or '05 when they bought the road. Therefore, it matters not what they paid for the road at that time.

THE COURT: Well, let it go in subject to your objection.

Q. In 1903, when you bought this road or when Mr. Flagler bought it, could you have constructed it or could you have laid the rails, graded it, tied it, put up the stations and the like, just what you got for seventy-four thousand nine hundred dollars?

A. No, I think not. Not as a new proposition. I don't think we could have constructed it for less than three hundred and fifty or sixty thousand dollars.

Q. As it then stood?

A. As it then stood. It would have cost us from three hundred and fifty to three hundred and sixty thousand dollars.

Q. Had it not been in operation for several years?

A. Yes, sir.

Q. Take the A. & W. road purchased by you, that road you testified about for one hundred thousand dollars in 1903, I think it was, in 1893, that included everything, could you have at that time built that road and graded it and tied it and put the rails down and constructed it and so forth as you got it for one hundred thousand dollars for that road?

MR. NEEDHAM: Same objection to this question.

THE COURT: I will let it in subject to your objection.

A. No, we couldn't have constructed that road at that time for much less than three hundred thousand dollars.

Q. I find here in 1895 account of C. J. & H. Railroad, four hundred and ninety-five thousand dollars, three hundred and eighty-nine thousand five hundred and seventy-nine dollars and seventy-one cents, I suppose that represents what those roads cost Mr. Flagler?

A. That four hundred and ninety thousand dollars?

Q. Yes.

A. There are two roads, the St. J. & H. and the St. A. & H.

MR. NEEDHAM: Which one are you asking about?

MR. ABRAMS: The one to St. Augustine, the other was the road to Palatka.

THE WITNESS: My impression is that that amount would be not on the purchase amount, but improvement added to that on both of those properties.

Q. We have another item here of five hundred and fifty-six thousand dollars with reference to the P. & O. Steamship Company.

Q. We will touch on that in a few minutes.

A. Yes, at that time I think that probably included the amount that had been made on the property as well as the purchase price.

THE COURT: Let's understand that; one hundred thousand dollars was paid for the St. A. & H.?

A. Oh, no, the A. & W. We have five different lines.

THE COURT: Then, you took the original purchase price and added it to the values, therefore, to make up the total amount?

A. We have added nothing; our books show nothing except one hundred thousand dollars on that property. Our books show nothing except the seventy-four thousand dollars on the Titusville property, but when they come to the St. A. & H. and the St. Johns and Halifax, it shows not only the cost to us, but it shows the improvements that have been made on the property, that is, on the Plant account of those two properties.

Q. Now, I find on this an item for the steamship company, five hundred and fifty thousand dollars, afterwards taken out of the Plant account, does that item still form a part of the assets of the Florida East Coast Railway?

A. Not the item in that shape, it stands there as stock. In other words, the steamship company, the P. & O. Steamship Company, our relations to that grew out of our ownership of the Florida East Coast and the steamship company, which we organized to operate to cover part of our line which was not built. We were authorized by our charter to own and operate down to Key West. Now, there were certain expenses that we carried on here with that old steamship company, but the building of ships and matters of that kind, generally in large sums, were carried on in the New York office, and when we came to consolidation, as New York charged us with five hundred and fifty thousand dollars or thereabouts, I can't just remember the figures, they charged us with what they had paid out, and that is what that item, I think, means. And it went into our Plant account first, as a charge against the Plant account and was afterwards taken out when we received the stock. So that our stock practically cost us that five hundred and fifty thousand dollars.

Q. How much did that stock cost you?

A. Five hundred thousand dollars. You take for instance, in that one item of two hundred and fifty thousand dollars, we paid for the steamship Miami. I can't say quite whether there was one hundred and thirty-seven thousand dollars, our books give us to Key West, because we bought the line and made some improvement, and it possibly went in here, and then we paid one hundred and seventy-six thousand dollars for the steamship Martinique and the City of Key West and the Cocoa, or the Argonota. Those were the principal large expenditures that we made that were cared for by the New York office.

Q. Now, Mr. Parrott, explain that consolidation, what do you mean by it. Did you first run your own separate line from Miami?

A. Yes, we operated a line from Miami to Key West and Havana, and to Nassau, and the P. & O. Steamship Company operated from Miami to Key West and Havana, and I think it was in 1899 or 1900, 1899, probably, that we consolidated the two lines.

Q. Was that steamship line at that time to Havana or Nassau paying its expenses?

A. No, sir.

Q. What was about the average annual loss?

A. Well, I can state that better by—

MR. NEEDHAM: If your Honor please, I can't see what we have to do with the steamship company as a part of this Plant. It was represented by this stock and the stock was put into this Plant account, and after the consolidation, was taken out of the Plant account and carried as an asset of the company. Of course, it is still an asset of the company, but it is not a part of this railroad. I object to that because it cannot be possible that in valuing a railroad transportation property, an independent steamship line, independently operated upon an independent ownership, can enter into the question of valuation. The value of the stock of the prop-

erty which they own is an asset, but it is not a part of the transportation which this company is putting to the use of the public, and that must be taken into consideration.

THE COURT: I understand your position and you may be right, but I don't assume to rule on the testimony as if I were trying the case. I am inclined to think that Dr. Needham is right. It goes in, of course, subject to your objection.

THE WITNESS: I want to make this suggestion, that the main part of that proposition covers a part of our line, our chartered line, in other words, the railroad company in my judgment is entitled to cover that line with steamboats until it completes its constructed railroad line. Now, they completed it and we still have a steamship on our hands.

THE COURT: Go ahead with your testimony, Major.

Q. Now, what interest do you own in this steamship company?

A. We own five hundred thousand dollars worth of stock.

Q. What is the total stock?

A. One million, we own half of it.

Q. When did you consolidate, you say?

A. I think it was in 1899.

Q. Prior to the consolidation can you say if the line from Tampa to Key West are making any profit?

A. Why, I think you will see on there somewhere, loss on operation of steamship company, something like ninety odd thousand dollars. Now, whether that was one year or how long I don't remember. I do remember this, that six or seven years after we took the line over, that is after the consolidation that we had made on the Tampa side approximately one hundred thousand dollars a year, and that we had lost on this side of it that that we had made on the other side.

Q. Just about paid expenses?

A. Just about paid expenses for six years.

Q. Now, prior to the consolidation, where was the

mass of travel, by what route was most of the travel and business?

A. Well, we were a new line and the business, the major part of the business went the other way from Key West and Havana.

Q. By way of Tampa?

A. Yes, sir.

Q. Now, what is the effect to-day as to where the mass of the business goes?

A. Well, the business has been inclining our way ever since we got south of Miami. I wouldn't say just what the percentage was, but we are getting a larger part of the business to-day.

Q. Prior to your going south of Miami, you didn't get one half of the business?

A. When I say "we," I should not perhaps say that because I am president of the steamship line, I should say the East Coast.

Q. You are president of the steamship company?

A. Yes, sir.

Q. Now, Mr. Parrott, you say you have five hundred thousand dollars' of stock to represent the expenditure for your original loan of five hundred and fifty odd thousand?

A. That seems to have been the charge. There were other expenses that went in there somewhere, approximately about five hundred and fifty-six thousand dollars, was the New York expenditures. I haven't got the item, I don't know the item at all.

Q. That five hundred thousand-dollar stock that you now own in the steamship company, cost the East Coast five hundred and fifty-nine thousand?

A. It cost at least that, and then the other charges were against that Plant account, I don't recall. I have not been through that statement, but there must have been probably some other charges there against that steamship line that would stand as a proper charge against that stock purchased.

Q. Now, you considered that that stock, that ownership in that company, a necessary interest for the carrying out of your chartered properties?

A. I did at the time we made that organization, yes, sir. I considered it necessary to carry out our steamship business. Now, we are practically completed to Key West, we are getting along very well, and really, as a matter of fact, it is necessary for the handling of our business. I imagine our business after the opening up of that line will increase seventy-five per cent in the next year.

Q. Do you know what is called the Jacksonville Terminal Company?

A. Yes, sir.

Q. What is it?

A. It is a company that operates terminal for the five roads entering the city of Jacksonville, passenger tracks.

Q. Called the Union Station?

A. Yes, sir, called the Union Station, made up of the Atlantic Coast Line, Seaboard, G. S. & F. and the Florida East Coast.

Q. What interest do you own in that Terminal Company?

A. We own one-fourth.

Q. What did you pay for it, what did it cost you?

A. Fifty thousand dollars.

Q. Do you know whether there is any outstanding bonds?

A. Five hundred thousand dollars.

Q. Then, it is represented by a two hundred thousand dollar stock, and five hundred thousand bonds?

A. Yes.

Q. How do you pay the expenses of that Terminal Company?

A. The expenses are divided upon the basis of cars in and out, that is the operating expenses. The fixed charges are made upon the basis of twenty-five per cent of each company.

Q. Now, if the income of the Terminal Company is insufficient to meet those fixed charges, then, does the fourth interest contribute it?

A. Each one of the companies operating in there

has what is known as a terminal list for the use of that station, and the ordinary operating expenses are paid for on the basis of using, that is, paid for on the basis of so many cars in and out. There are some earnings, of course, as express and news companies and things of that kind, it is not considered in the operating expenses, but is considered in the fixed charges. That is, each of us get twenty-five per cent of whatever those earnings may be. For instance, the operation might not be over seventeen per cent depending upon the number of cars we operate in and out of there. Our proportion of that earnings would be twenty-five per cent, our proportion of the taxes and insurance would be twenty-five per cent.

Q. What I want to get at is, this is used exclusively for railroad purposes?

A. Yes, sir.

Q. Haven't you got a large yard from which you transfer from one to the other?

A. Well, there is yards there that we use to a certain extent for freight purposes, but the Terminal Company itself has really nothing to do with that. It maintains the yard and we operate through there and all of our interchanging tracks are in this yard.

Q. You are owners of one-fourth interest in that property?

A. Yes, sir.

Q. Mr. Parrott, what about the Atlantic and East Coast Freight Terminal, is that a part of this Terminal Company?

A. Not at all, that company is a Freight Terminal Company. Each railroad entering Jacksonville has really got its own terminal, that is our freight terminal owned by the Atlantic Coast Line and ourselves, jointly. That is, we own half interest, and pay on a half interest. The Company is really operated separately and independently by the two companies. We have had no agreement except a verbal understanding as to the use of it. The only property

really that we are using in common is the track approaching the terminal. The terminals themselves consist of two long warehouses, seven hundred and fifty feet long each, and we use the southern warehouse and they use the northern warehouse.

Q. You use different sides?

A. Yes, sir.

Q. And you use the tracks jointly?

A. Yes, sir.

Q. Mr. Parrott, can you recall what that cost each of you?

MR. NEEDHAM: I would like to ask is that owned by a separate corporation?

A. I would not say it was. My recollection is that the title stands in the name of the Atlantic and East Coast Terminal Company.

Q. It is a corporation?

A. It is a corporation. But the purchase of that company has been paid one-half by one and one-half by the other by the two companies.

Q. How has the account been kept?

A. Why, we carry it upon our books as the Atlantic and East Coast Terminal Company, and it has been paid to the agents of the railroad, whether in the construction or in the purchase of land or what. For instance, we have agreed on the construction of that property, and when the bills would come in we have notified our respective treasurers and they have been paid to their offices.

Q. Each owning a half interest and each having to contribute one-half of the cost?

A. Yes, sir.

Q. Can you recall what one-half of the cost was up to the present time?

A. I can say approximately, three hundred thousand dollars, one-half of it.

Q. You mean including the cost of the land?

A. Yes, sir, in other words, I think the property cost about six hundred thousand dollars, and the buildings cost about one hundred and seventy thousand dollars.

Q. Have you an idea what that property and buildings are worth to-day?

A. I am not a land expert.

Q. Mr. Parrott, when did you have a charter to construct the road to Key West?

A. 1893, about that. I don't recall the date correctly. We were organized in so many companies early in our history that I can't say positively, but my best recollection would be it was in 1893.

Q. Is it not a fact there were a large number of companies chartered to build railroads to Key West?

A. There had been charters, yes, sir.

Q. Did you have a charter in 1897?

A. Yes, sir.

Q. Was it necessary for you to have to get a charter from the Legislature in 1905 to build to Key West?

MR. NEEDHAM: Well, now, I object to that, whether they had the power to build to Key West is a matter to be proved by expert testimony.

MR. ABRAMS: I will state that it is necessary to show that he had no power or any charters to build a railroad to Key West prior to the year 1905.

THE COURT: He can answer the question, but it is really a question that the Courts will have to ponder over for a long time.

A. Yes, we did, we had a charter in 1893 to build a road to Key West. And we got an amendment to our charter in 1905.

Q. Now, Mr. Parrott, state the facts surrounding your extension toward Key West.

A. Well, that is a long story. You know, really, the construction of this property began in 1892 just about the time we obtained charter for Key West. That was in progress at the time we began our construction south. We constructed to Rockledge the first winter after 1892, and our terminus for that winter was Rockledge.

THE COURT: Q. Where is Rockledge?

A. Rockledge is a hundred and seventy-five miles

south of Jacksonville on the Indian River, and in April, 1894, we reached Palm Beach operating parts of that line in there through that winter. We stood still for about a year and began our construction from Palm Beach to Miami in 1895, completing that in April, 1896. Then, we stood still for four or five years and began the construction from Miami, south.

Q. To where did you start to go?

A. Well, our ultimate end was to cover our charter rights. We made surveys south east by way of Cape Sable, and in the meantime the line was being constructed to Homestead, and we found that was the proper place to stop pending our investigation of the line from that point, south. Nearly all the surveys with which we had been familiar had been along the keys, but we wanted to look into that Cape Sable proposition, so we took a point of departure at Homestead, and in the meantime we went on with the construction of that twenty-eight miles between Miami and Homestead and in 1903 or '04 the road was open in operation to Homestead, and the survey was practically finished. That is, the preliminary survey to Cape Sable, we found it was impracticable with our then present knowledge of construction and afterwards we had a survey completed into Key West over the keys. That seemed to be the practical line of construction.

THE COURT: Q. When did you first make the determination that it was practicable to build over those keys?

A. After the preliminary was made in 1904. It took about six months to make that preliminary in there. We really didn't get under the way with our determination until 1905, and the actual construction was begun in 1906; although during the summer of 1905 we probably had five or six hundred men in the field, but in October, 1905, we put into the field about, I think we began about the latter part of October—

Q. When did you first reach Homestead?

A. We reached Homestead in January, 1903.

THE COURT: I think it is time that we will take an adjournment.

We will adjourn until to-morrow morning at half-past nine.

Thereupon at two o'clock P. M., Friday, Court convened pursuant to adjournment.

Thereupon the Petitioner to further maintain the issues upon its part produced and caused to be sworn as a witness one Ralph Benson, who testified as follows:

RALPH BENSON.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. Ralph Benson.

Q. Where do you reside, Mr. Benson?

A. Chicago.

Q. What is your business or occupation?

A. I am at present assistant sales manager.

Q. Of what?

A. Of the Pullman Company.

Q. As such, are you familiar with the prices of freight and passenger equipment?

A. Yes, sir.

Q. Now, have you examined any of the freight and working equipment of the Florida East Coast?

A. Not very much of the freight equipment, no. I haven't examined any of that.

Q. Well, when did you arrive here?

A. On Thursday morning.

Q. Have you examined the prices paid for this freight equipment in the different years stated here? In 1889 and from then on?

A. Yes, I have looked that over.

Q. Now, Mr. Benson, can you state to the Court whether or not these cars could be produced at this time for the same or less price or a greater price, whether it would cost more to reproduce them at this time than when you bought them.

A. They won't be the same for all cars for the reason that in some years, in fact, say in 1907, the prices were almost as high as they are to-day. Since that time the prices have fluctuated and prior to that they were much lower. I don't think—well, there is probably not over three lines of cars there that could be built anywheres near the price, that is shown as the original purchase price.

Q. What are those three lots?

A. Built in 1906 and '07. Ninety-six flat cars purchased in 1906, one hundred and eighty-six box cars purchased in 1906, and one hundred and ninety-three cars purchased in 1907. The prices of these cars would be very little more to-day than what it is shown there. All the other cars would be much greater.

Q. To shorten it, take the balance of that equipment, can you state approximately, can you say what percentage greater it would cost to-day to purchase them than those figures we paid for them?

A. I would not attempt to do it offhand, no.

Q. Well, can you do it by figuring on it?

A. Yes.

Q. Well, state it.

A. Well, taking all that equipment this year, freight equipment at the price shown and the date they were purchased, the aggregate increase in cost, say to reproduce it would be seven per cent.

Q. There has been no decline of those prices?

A. No, not for any one year.

Q. Now, how about the passenger equipment?

A. Well, the passenger equipment I have set a price on every car.

Q. What does that show?

A. That shows the cost to reproduce each of those cars at the present time.

Q. Is that your estimate?

MR. ESTERLINE: Is that your estimate?

A. Yes, sir.

MR. ABRAMS: I offer this in evidence. These prices are what it would cost to reproduce them to-day.

Q. Then, as I understand it the increased cost of passenger equipment is greater than the freight equipment, isn't it?

A. Yes, sir. Two of the cars that are listed here are private cars now, the price is shown, or the cost of the cars when they were originally built as coaches, but they have been rebuilt into private cars and it would cost those amounts to reproduce them to-day in their present condition, the present type of cars.

Cross-examination.

MR. ESTERLINE: Q. Mr. Benson, in this estimate of cost to reproduce these cars today, in that estimate you have included the improvement which are on the present day cars, which were not found on the older cars, have you not?

A. I have taken the car as it stands today in each case.

Q. Have you seen those cars, do you know what they are?

A. I have seen one of every type except one. The numbers are on the market there of the cars I examined.

Q. You have seen one of each type?

A. I have seen one of each type except one or two types. The numbers are on the margin of that sheet in pencil.

Q. It would not include, do you mean to say, the modern improvement on the present day cars?

A. You are speaking of these cars, of the present day cars in general?

Q. I am speaking of the improvements that are on the present day cars, that may not have been on the older cars. In this, is it not true that the latest improvements are not considered in this estimate?

A. Well, let me ask you then, by this latest improvements, you mean the improvements that we are doing in the general work?

Q. Yes.

A. Some of those cars are the very latest designs that are out. Others have betterments on them which bring them up into a class equal to what we are turning out today.

Q. Can you tell by a day's inspection of the various improvements which go to make up the cost of the construction of those cars?

A. We built a large part of that equipment ourselves.

Q. You don't build any or participate in any, you are Sales Manager.

A. Sometimes I think I am. No sir, I am an engineer. I have been in the sales department only three years. I had charge of the engineering and estimating at the Pullman Company's warehouse, which is the only one of the seven we have where we do any of that kind of work, and I have had charge of the engineering and estimating department for seven years. Prior to that, I was in the estimating department and have been through the whole of the car work.

Q. Well, the cars you are making now are widely different from the cars you were making years ago when these cars referred to were new?

A. That is correct. When these old cars were built, yes. Some of those cars were built this year, just turned out.

Q. But not very many of them?

A. No.

Q. Now then, on the older cars, take the oldest cars in service of the company as compared to the newest in the service of the company and your esti-

mate in reproducing them, it would not include the improvements on the new, would it?

A. Not at all.

Q. Now, cars depreciate in value like anything else, don't they?

A. They do.

Q. Put a car on duty this year and start it to running, it depreciates right along?

A. It is bound to.

Q. And as to the old cars, take the cars which were made a number of years ago, you don't reproduce cars of that style now, do you?

A. Not frequently, now and then we do. A number of those cars are fifty feet cars and we have a fifty foot car now and then to build for some small line, or export use or for some suburban service.

Q. But that isn't an exception?

A. Yes, sir.

(That's all.)

Re-direct examination.

MR. ABRAMS: Q. In the types that you examined of the various kinds that we have, did you perceive much evidence of depreciation in those that you saw?

A. No, the cars are in very good shape. There are six or seven in the shop now undergoing general repairs, and the remaining is in good condition. Some of them are being re-enforced at the framing itself.

Q. That would increase their strength, wouldn't it?

A. It does, yes.

(That's all.)

Re-cross-examination.

MR. ESTERLINE: Q. The cars that you saw about which you are now testifying were undergoing repairs?

A. Yes, sir.
Q. And you have not seen any of the other cars of which those were represented a type?
A. Yes sir, I have.
Q. You haven't inspected any of the others?
A. Yes.
Q. When did you inspect them?
A. In the station, and in the train coming down.
Q. Just as you were riding on them and at the station?
A. Yes sir, a superficial inspection, but you will understand we have built a very large number of these very cars.
(That's all.)
(Witness excused.)

Thereupon the Petitioner to further maintain the issues upon its part produced and caused to be sworn as a witness, one T. L. Huddleson, who testified as follows:

T. L. HUDDLESON.

Direct examination.

MR. ABRAMS: Q. What is your name?
A. T. L. Huddleson.
Q. Where do you live, Mr. Huddleson?
A. Miami, Florida.
Q. Are you engaged in the real estate business?
A. I am.
Q. How long have you been engaged in that business?
A. About six years.
Q. Mr. Huddleson, did you in 1907 with Mr. Wilson and Mr. Morse examine and value certain lands for the East Coast Railway?
A. I believe we did in 1908.
Q. Or, in the early part of 1908?

A. Yes sir, I think about in the early part of 1908.

Q. Now, take up this first land here. (Pointing to a tract on page fifteen, sixteen hundred feet long.) I find that you valued it at five hundred dollars a foot, front, or eight hundred thousand dollars as a whole, please state upon what you based that valuation.

A. Well, we based it by comparison with the land adjoining the shore, but its value is as an adjunct to the Florida East Coast Railroad system, and also considering the basin is dredged out, the only connection with the deep water channel and the fact that is practically the only big piece of any consequence in this city.

Q. Doesn't that deep water run parallel with it?

A. Yes sir, there is a basin dredged out in front sufficient for the P. & O. vessels to come in there, and dock and come out.

Q. That deep channel was dredged out?

A. Yes sir, it was dredged by the Florida East Coast Railway, and then dredged right on out to the lighthouse.

Q. As it goes out, isn't this further from the shore as it goes out?

A. Yes, sir.

Q. Approximately, what would be the depth of the water before the dredging was done?

A. I don't believe I could give that testimony accurately, but my recollection is, before the channel was completed, there was something like perhaps eight or ten feet of water, I don't think there was much more than that.

Q. That dredging had to be done through the rocks, didn't it?

A. Some of it, yes sir.

Q. The railroad dock and everything are right across this track, is it not?

A. Yes sir, the tracks run right out on the docks there.

Q. On this tract of land, is there not a large amount of made ground?

A. Yes sir, practically all made, yes sir. In fact that is all made (indicating) where this line is drawn.

Q. Didn't you have some time ago a steamship line running from Jacksonville to Miami?

A. Yes, sir.

Q. Where did that steamship land? Where did the boats having to have landings, where did they necessarily have to go?

A. To this landing at this dock, a vessel with any draft or any consequence.

Q. Now, go on and state how you made your valuation.

A. Well, we took the valuation of the adjoining properties, purchased lands and all, and learned the values at which they are listed with us and at which we know sales have been made recently, and averaged the value per front foot and multiplied it. We consider this property is worth at least five times, that is my judgment is, that it is worth at least five times as much as the other property.

Q. That was your judgment in the early part of 1908?

A. Yes, sir.

Q. Do you consider it has depreciated in value since then?

A. No, sir.

Q. What do you estimate the present value of that tract, if it has not depreciated, has it depreciated, or has it remained in the same condition?

A. It is worth at least the price we put on there at the present time.

Q. Do you value this strip along here?

A. Yes, sir, we valued that.

Q. What did you value that?

A. We undervalued that at the time, that is, we found out, we have since, then we put down twenty-five dollars per front foot.

Q. At that time?

A. Yes, sir.

Q. Didn't you value it, do you know of any land on that front being sold?

A. Yes sir, a thirty-five foot strip of Riparian Rights right at the foot of Twelfth street, here sold for sixty-five hundred dollars cash.

Q. What would that be worth a foot?

A. Two hundred dollars.

Q. And you valued the adjoining land at that time at twenty-five dollars?

A. Twenty-five dollars a front foot.

Q. What do you think that is worth today, that land?

A. Well, based on the values of these properties adjacent here, and what these properties are being sold at at the same values of these, and what we estimated these values from here to here, a distance of thirteen hundred and fifty feet, at present was worth one hundred and sixty-six dollars and six cents per front foot.

Q. Has there been much increase in values in Miami the last four or five years?

A. Yes, sir.

Q. To what extent?

A. Well, in this territory here, which is the most desirable section of the city from the railroad to the river, and from the river down here, and then back to the railroad here, I would not hesitate to say that the values in there has probably doubled since that time, anything that is for sale, that is in the way of vacant properties.

Q. Now, Mr. Huddleson, this frontage has no basin dug out like this other, has it?

A. No sir, that is the reason we gave it the same values that I would this.

Q. Isn't all this rock along here?

A. Yes, sir, it is rock along through here.

Q. Now, this is the Miami River?

A. Yes, sir.

Q. About what is the depth of the water in there?

A. I don't think that you could navigate in there with more than eight or nine feet.

Q. Now, I want you to show the Court, if you can, the land values, water front for commercial or other purposes, in this river in price, if you have got them actually, in the past four years for these Riparian Rights.

A. I have a number of places here. (Indicating.) Now, this Cook property, the property owned by George F. Cook & Company, lying on the south side of the river, is about this location. I have only got it approximately, I don't know the line, it is lying about in this location. I got the dimensions approximately. It is back about three hundred feet and about a hundred and twenty-five feet water front, and the lowest figure he would give us was fifty thousand dollars, and he said he wouldn't say at the time he would sell the property at that time.

Q. What was the frontage?

A. The frontage is about a hundred and twenty-five feet. Now, of course, at the receiver's sale the other day—

Q. How long ago?

A. Well, within the last sixty days, I think. The property lying right adjacent here—

MR. BOGGS: Just describe it, please. Avenue "B" south of the river at "B"?

A. Yes, sold for twenty-eight thousand, five hundred dollars. The size of that was a hundred and eighty-five by two hundred.

Q. Is that at public sale or private?

A. It was sold at receiver's sale, twenty-eight thousand, five hundred dollars. And the property lying just north of the river adjacent to the Miami river, now known as the McQuade Company, they have a strip two hundred and fifteen feet wide here, by two hundred and eighty-four feet long. It was purchased five years ago for thirty-two thousand, five hundred dollars, the lowest price at which it can be purchased at now, the price we have submitted at the present time, is sixty thousand dollars. We have been working on that for perhaps sixty or ninety

days. The parties have been there and have been over every foot of the property and are very favorable to make the purchase. The only purpose at the time they left here was to go and get the sufficient funds to make the required payments. While this on the north side of the river here, Mr. Yelvington, is property one hundred by two hundred and fifty, for which he paid fifteen thousand dollars six years ago. That property can't be purchased at the present time. Mrs. Rambo owns property adjoining that, seventy-five by two hundred feet, and she gave us a price on that about two weeks ago of twenty-five thousand dollars. Mr. Eoler, his place includes this little strip about seventy-five feet wide and two hundred feet deep, Riparian Rights, we got a price on this for this same party here, at forty thousand dollars. The property of Mrs. Rambo has two residences on it. Now, north of the city about an eighth of a mile north of the city on the Bay front there, a lot eighty-four feet by two hundred and fifty feet deep was sold last week for seven thousand, five hundred dollars in cash.

Q. Any deep water?

A. No deep water until you get to the channel. I guess it must be about an eighth of a mile, and it pairs off in this direction. The gentleman who owns that tract, owns a tract of one hundred and twenty-one feet of Riparian Rights about six hundred feet this way, and at a price of ten thousand dollars he took out of the agent's hands, but in the meantime, the property was sold for six thousand, five hundred dollars about a week ago. We are at the present time developing property two miles north of the court house.

Q. On the Bay?

A. On the Bay front, yes sir.

Q. Any deep water there?

A. No deep water there at all, but it had a beautiful bay. We are selling lots in that property and we have lots one hundred by two hundred and forty

feet depth on the south end, three hundred and forty-three feet on the north end, we have sold four of those, I think, and two of them at five thousand and the other two at six thousand, five hundred. We sold four out of the eight. Those have been sold since the first of February. Now, right at the foot of this street here, there is one hundred by two hundred feet in depth of Riparian Rights here, sold for nine thousand dollars last week.

Q. Now, Mr. Huddleson, from your report of lands on the Miami river, on each side with a depth of only eight or ten feet of water, have been sold at prices varying from two to three hundred dollars a front foot, up to between three and four and five hundred dollars, now can vessels that reach this railroad dock come up that river?

A. No, sir. That is, the deep draft vessels can enter there, vessels drawing nine feet, I think is the deepest you can get in the river.

Q. Can you give any price of these adjacent lands at the present time as compared with the estimates you made, can you give what these lands are held at?

A. I can give you the values at the present time. I can at this time, give you those at the present time. These lots along here are ten thousand dollars for seventy-five foot lots.

Q. Can you give us what they could have been bought for when you made that valuation?

A. My recollection is somewhere in the neighborhood of five thousand dollars, and I believe less than that, I cannot recall now. In fact, this property here was bought at about five thousand dollars. Dr. Shafer bought this property at about five thousand dollars if I am not mistaken, and he has owned it for a matter of about four years.

Q. Have those values increased all along here in the same proportion?

A. Yes, sir. Properties up here that could have been bought for eighteen hundred dollars, are held at three thousand, five hundred dollars now.

Q. Has there been any increase in the population of Miami in the last four years?

A. Yes sir, I think there is no question about it. A substantial increase.

Q. Business increase too?

A. Yes, sir.

Q. Now, in the values you made on the lands of the company all around, in the vicinity of the railroad line, has there been an increase?

A. Yes, sir.

Q. About the same proportion, or less?

A. Well, as I stated a while ago, I believe between the railroad track and the river here, between here and the railroad, it is practically doubled since that time.

Q. Well, now is it not a fact that the great bulk of increase of valuation lies in this square, surrounded by the railroad on three sides and the Bay on the fourth?

A. Yes sir, there is no question about that.

Q. That is the most thickly settled part of Miami, isn't it?

A. Yes, sir.

Q. And it is your opinion that the increase of values there have been at least one hundred per cent?

A. Yes sir, in that territory. I believe in this territory there has been an increase, but probably not as great as down in this territory. In fact, we have made no sales up in this section right recently. That is, I don't know of anything listed.

Q. Now, is it not a fact that the lands that you have valued in Miami outside of these water front lots, lie contiguous to the railroad on three sides?

A. Yes, sir.

Q. And there is where the great increase of values have been?

A. Yes, sir.

(That's all.)

Cross-examination.

MR. BOGGS: Q. Mr. Huddleson, what are the dimensions of that piece that you valued there, the length of it along the bay?

A. The length is sixteen hundred feet.

Q. That is the basis on which you figured?

A. Yes sir, figured from this lot to the lower side of Eighth street.

Q. And in figuring the Riparian Lines here, what depth did you figure was owned by the railroad company?

A. This tract here, I don't know just the depth of it. I would judge perhaps, three hundred feet, something like that.

MR. ABRAMS: How much?

A. Five hundred feet, I guess. Let me see, no, it is a matter of three or four hundred feet.

Q. Where the docks does not stand, what depth were you figuring on there?

A. Just the Riparian Rights strictly. This strip shown here varying in depth from twenty-five feet to perhaps seventy-five.

Q. You figured then, on the ownership being in the railroad company of the strip shown on this map as lying between Biscayne Drive and the water, is that a fact?

A. Well, I didn't understand I was testifying as to the ownership of the land.

Q. No, we are not asking you to testify to the ownership of the land, but we want you to describe what particular piece of land it was you valued when you said at that value.

A. South, from a line parallel to the south side of Eighth street, that is a line extended there to the center of block forty.

Q. And back to Biscayne Drive?

A. Yes sir, back to Biscayne Drive.

Q. And south of that, you valued the strip shown on this map between the Bay and Biscayne Drive, is that it?

A. Yes, sir. Between Biscayne Drive and the Bay is what we valued.

Q. Now, in giving the values per front foot of contiguous lots, those lots had a very much greater depth than the lots you are valuing here, did they not?

A. Yes, sir.

Q. Well, don't you think that where the depth varies all the way, I believe you said from twenty-five feet to one hundred feet in a strip, that you are valuing, that the values of this property with a greater depth are rather misleading; has a need of comparison?

A. No sir, we have gone over that pretty thoroughly, Mr. Boggs. We placed this value on this strip that we did to the adjacent property. That is on the sixteen hundred foot strip. On the strip south of that, fifteen hundred feet, we give that an equal value with a little frontage.

Q. Now, south of that, the lot frontage carries a great deal more back land, doesn't it, than this strip would?

A. To be sure, I understand that. This strip right here sold for six thousand, five hundred dollars, thirty-five feet wide.

Q. You are somewhat familiar with the conditions upon which you say that strip sold for sixty-five hundred dollars at the foot of 12th street, is it a fact that that was the only strip of land of private ownership on the entire Bay front at Miami?

A. So far as I know it is, yes sir.

Q. Well then, do you think on the entire Bay front of the city, all the property is owned by the railroad company, except thirty-five feet, the price of that thirty-five feet is a natural price, a price which would be a fair deal in comparison with the price of the old water front?

A. I believe, Mr. Boggs, that we can sell every Riparian strip along there at the price we put on it.

Q. I am asking you about this particular strip,

don't you think there is an artificial condition there?

A. I don't think so, Mr. Boggs.

Q. Don't you think it takes an artificial condition for the railroad company to own all the water front of the city, but this thirty-five feet, don't you think that thirty-five feet would be an artificial value?

A. Well, that is a question.

Q. What use is the railroad company making of this land lying between that part that you marked as a dock and 12th street?

MR. ABRAMS: I object to that question, if the Court please, I don't think it is relevant.

THE COURT: It might be. It might be relevant, we will let it in.

A. Why, none at the present time, except I want to qualify that a little, except at the south end of the dock, they have a basin dredged in there used for anchorage and loading, at the present time, they have a dock running out here at the present time.

Q. Now, you speak of vessels coming to that dock, Mr. Huddleson, is it not a fact that when coming into Miami they come up the Miami river?

A. Well, I suppose it does at the present time.

Q. Is that Terminal dock used for anything except the vessels belonging to the steamship line?

A. Yes, it is used frequently for holding their vessels, and landing yachts there where they can't get to the other docks. I have seen a number of vessels there.

Q. There is no regular vessel running except that one?

A. No sir, that is the only one I know of.

Q. That runs how many months of the year?

A. It runs during the tourist reason, I think beginning about January until some time in April, I think.

Q. What relation do you think the value that you put on that dock property there, would compare to its rental value?

A. Well, that would depend altogether on conditions. A great deal on conditions, as it is necessary

for the railroad company in its business, it would be very valuable. Standing there owned by private individuals and having access to the railroad, I should think it would be another proposition. It is speculative, it is a hard question to answer.

Q. That Cook property that you speak of as being offered for fifty-six thousand dollars, that is improved, is it not?

A. Yes, sir.

Q. And that price would involve really the good will of the business as well, wouldn't it? If Mr. Cook sold it he would have to get out of his present wharfage business?

A. I don't think that included the entire length of his dock there. The quotation we had is for—

Q. Well, Mr. Cook would have to include that in his figures or what it was worth to him, wouldn't he?

A. To be sure.

Q. Those other properties you mentioned there are all improved properties, are they not?

A. Yes, with the exception of the Conrad property, and the Edgewood property.

Q. Those are the ones way north of the city?

A. Yes sir, the first property is improved.

Q. Please take tracts of water front on the river which you valued in this exhibit. (Pointing to water front from Avenue "F" to Avenue "G.")

Q. Now, you value the tracts of adjacent land there at forty-four thousand dollars, didn't you, the land belonging to the railroad company there?

A. Yes sir, forty-four thousand dollars.

Q. And that was based on the actual valuation of other lands adjoining that tract, was it?

A. Yes sir, lands in the vicinity there.

Q. Then, you valued the water front privileges on that, six hundred feet at fifty thousand dollars separate, did you?

A. Yes, sir.

Q. Where did you get your basis for the separate valuation of water front as distinguished from the land to which it was attached?

A. My recollection is that we took a hundred and fifty feet depth here on these lots and compared those with the values of these properties down here, along the river here as near as I can remember. It has been a good little while back.

Q. You have stated it in your Exhibit here as the water front. Now, in your description of the land, the actual land that you valued, you described it as running all the way to the river in this description.

A. That is in the water front?

Q. No, in the description of the land you valued at forty-four thousand dollars, you ran it all the way to the river.

A. No, that must be a mistake. I think we made a mistake on that in this case. It was our intention to leave about a hundred and fifty foot strip there, if I remember, with the Riparian Rights privilege.

Q. Well, is it not a fact that those Riparian Rights that you value there on the river, are above two bridges?

A. Yes, sir—Well, no, the first part of this Riparian Right here is below.

Q. Well, most of the six hundred feet, though, is about two bridges?

A. Most of the six hundred feet is.

Q. You state those two Riparian Rights about the bridges are as valuable as they are below? Both of the bridges you have been valuing?

A. It would make very little difference for commercial purposes.

Q. Is the width of the Miami river correctly scaled so far as you know on this map?

A. So far as I know it is, yes sir.

Q. How did you get at the description of the Riparian Rights land that you were valuing in this strip here?

A. Well, we obtained them from this map that we got from Mr. Morgan.

Q. You don't know of your own knowledge how much of that belongs to the railroad company, and how much does not, do you?

A. No, sir.

Q. And you don't know whose land it was that you were actually valuing?

A. Well, it is supposed to be and so far as I know, it is the land of the Florida East Coast Railroad Company.

MR. BOGGS: May it please the Court, I move to strike from this Exhibit and from the testimony of this witness all of the land described in this Exhibit and what is shown by Mr. Carter's testimony and map to be the property of the Florida East Coast Raliroad Company, to which all the lands not shown as marked in yellow on this map, submitted by Mr. Carter and testified to as correctly showing the property of the Florida East Coast Railroad Company. The ground of the motion is this, your Honor, that these values are offered and put into this record, that these values of the plant of the Florida East Coast Railway Company and that it is real estate holdings devoted to the public use. This witness says that he does not know whether this land that he was valuing was really the property of the railroad company or not. Mr. Morse, the witness that testified at the last hearing and put this map in evidence, said he didn't know whether it was the property of the railroad company or not. We objected, therefore, at that time to the introduction of this testimony in evidence because the land was not identified as being the land of the Florida East Coast Railroad Company. Counsel for the Petitioner stated that that deficiency would be made up by placing on the witness stand, the witness Carter, who would identify this land and connect it up, and connect up the testimony as to the values by showing the land valued belonged to the railroad company. It was only upon that understanding that these exhibits were all admitted. They were all admitted subject to that understanding and subject to these objections and unless it could be proved by competent testimony that the lands valued were the actual lands of the railroad

company, and devoted to the railroad use, the exhibit should not be considered. Now, we have brought this matter to a head. We have here the testimony of Mr. Carter as to what lands are the railroad lands in Miami, and we insist that they have no right to put upon us lands which they do not own, and lands that they own that are not used for railroad purposes.

THE COURT: Motion denied.

Q. Mr. Huddleson, the Terminal wharves as you understand it, was sixteen hundred feet long, wasn't it?

A. Sixteen hundred feet, yes sir.

Q. (Handing witness map of Miami made by Mr. Carter.) The Terminal wharves made by Mr. Carter, the company's engineer, shows there as being seven hundred feet long, how do you account for that discrepancy?

A. Well, I will tell you, I never thought of it before. It is our mistake. The wharves does not extend down that far. It is certainly a mistake, it does not extend down that far. The wharf does not. The wharf extends to this piece here, 16th Street.

Q. Well, in your opinion, does the present or absent remaining nine hundred feet of wharf, make any difference in your valuation?

A. I believe the property is worth the amount of money that we valued it, Mr. Boggs.

Q. It does not make any difference then, if the wharf is not as long as you supposed it to be in there?

A. A part of the wharf is there, the basin is there, and that is practically a part of it. The dredging has been done.

Q. Now, on Mr. Carter's map, a strip of this block eighty-one lying immediately south of the wharf, as he has drawn it is not part that belongs to the railroad company, does that make any difference in your calculation?

A. It would make that distance, I would clean up the five hundred dollar per foot from off that to be

sure, that would be eighty thousand dollars figuring on fifteen hundred feet.

Q. You have valued in this exhibit, five lots in block seventy-seven?

A. Yes, sir.

Q. (Handing witness Carter's map, Carter Exhibit) Did you see those lots indicated as belonging to the railroad company on that map?

MR. ABRAMS: We object to that if the Court please, because it is a matter of argument. The fact that it is not indicated there don't show that it don't belong to the railroad company because we expect to prove, and every one of them does, by the witnesses.

MR. BOGGS: On that exhibit, Mr. Carter testified that the railroad lands owned in 1907 are marked in yellow, and what they have acquired since, are marked in blue. Do you find any lots—

MR. ABRAMS: I object to the question because Mr. Carter testified as to the land that had been turned over to his jurisdiction at that time.

THE COURT: You better omit in your statement anything as to what Mr. Carter testified.

MR. BOGGS: I will withdraw the question.

Q. Do you find any relation of any lot of block seventy-seven on Mr. Carter's map?

MR. ABRAMS: We admit there is none.

A. None.

MR. ABRAMS: That is a part of these depot grounds.

A. None except on the corner, on this block here, it says "Five," there is five on the blue print there.

Q. You have valued six lots in block eighty-six, how many do you find colored on that plat, and how colored?

A. One lot, colored in blue.

Q. You have valued six lots in block ninety-seven, what do you find colored there?

A. I find two marked in blue.

Q. You have valued four lots in block one hundred and six, what lots do you find colored on that plat?

A. None.

(That's all.)

Re-direct examination.

MR. ABRAMS: Q. Now, do you know who owns that Riparian Right in this Exhibit here, where it is not marked yellow?

A. It has always been considered railroad property since I have been in Miami.

Q. Now, this narrow strip here, how wide is that?

A. There is no way to determine that, because the docks are built here. There is no disconnection there, it is built right out to the drive. I couldn't say any more than the scale of the map. It would be about sixty feet wide I would judge.

Q. Is it not a fact that there is an enormous amount of made land there, and the side tracks run out on there, and there is a coal bin out there?

A. Yes sir, the coal bin sets out in it.

Q. Is it not a fact that this land, that made land extends out in an angle here?

A. No, sir, about here I think, Major, about 6th Street. Yes, there was a fill in there at the time the extension work was to be done for constructing buildings, and I believe those buildings run down quite a little way. The docks does not extend down here but the filling was done.

Q. That is, not the docks, but the extension and the buildings?

A. Yes, sir.

Q. Do you know what is in this land in here (indicating)?

A. Seven hundred and thirty-four thousand, seven hundred and seven square feet, amounts to sixteen—

Q. What is being done with that land, what is it being used for, do you know?

A. Well, it is being occupied there for various purposes. I think the Baker Holmes Company has a warehouse there at the present time.

Q. Any railroad tracks?

A. There is a railroad track on each side runs down there. I haven't been down there recently and

couldn't testify accurately about that, but there are some tracks running in there to the Baker and Holmes warehouse. My recollection is there is a track down there toward the warehouse, and there is an enormous quantity of coal unloaded there, the last time I was out across that property there, I don't know how many tons, but an enormous quantity of it stacked up there the last time I passed through there, about ten or fifteen feet high.

Q. How long ago since you were over it?

A. I think about two months ago, about two months.

Q. In valuing that water front, have you placed any higher value on it than on the other land on the river, has sold for?

A. Why, I don't think we have.

Q. How many feet is there you have valued?

A. Six hundred feet.

Q. Six hundred feet for how much?

A. Fifty thousand dollars for the Riparian Rights.

Q. How much is that a front foot?

A. Between eighty and ninety dollars. That is, perhaps down in here. This property of the Cook Company, right in here (indicating).

Q. How about this property on the same side of the river that you testify?

A. That sixty dollar property there.

Q. In the neighborhood of three hundred dollars a foot?

A. Yes, sir. And this we got down here, less than one hundred dollars.

Q. Isn't your valuation much less than any of the lands you have ascertained the prices of on the river?

A. The sixty thousand valuation we are giving you, Major, at the present time. This valuation of fifty thousand dollars here, is at the time this map was made in 1908.

Q. Has that increased in value since then?

A. Unquestionably.

(That's all.)

Re-cross-examination.

MR. BOGGS: Q. Will you indicate on that map where the Electric Light Plant and the Water Plant are, Mr. Huddleson?

A. That is the Electric Light Plant there (indicating). I am quite sure that is right where it is (indicating). (Marked in pencil.)

Q. Does that Electric Light Plant belong to the railroad company?

A. Yes, sir.

Q. Does that plant supply light and water to the city of Miami?

A. Yes, sir.

Q. Are there any railroad tracks lying west of the white line from the river, and parallel to the right of way and two hundred feet distance from it?

A. Two hundred feet distance from this place here (indicating).

Q. Yes, lying west of this white line.

A. I don't think there is.

Q. What is there to-day, there?

A. My recollection is, that there is a spur that runs in on the east side of the plant for unloading wood, and then there is also a spur running in on the west side of the track to the Baker and Holmes warehouse.

Q. Indicate on that map where the Baker Holmes warehouse is.

A. Now, let me see, I don't know that I can do that accurately.

Q. What business are they in?

A. Wholesale grocery, grain and so forth. Now, Chase and Company's warehouse, I don't know whether that is in there or not, I don't know whether I can mark it correctly.

Q. Well, there is a warehouse that belongs to private parties, used by private parties lying east of the railroad track on the river?

A. Yes, sir, it is on the railroad company's land.

Q. Well, is there any tracks lying west of this land,

which are pointed out to you lying two hundred feet west of the track?

A. Yes, sir, that is where I spoke of, where the coal is.

Q. One spur track down there?

A. One spur track running right up on here to take the coal out.

Q. How much of that lot would you say was covered by the coal pile?

A. Well, I don't know that, I couldn't tell you. I don't know that I paid that much attention.

Q. Was it as much as half of this lot?

A. No, sir.

Q. A fourth?

A. No, I would say perhaps, thirty feet wide, by, I don't know, fifty feet long.

Q. The rest of it is vacant?

A. Yes, sir.

Re-direct examination.

MR. ABRAMS: Q. When the railroad brings wood or coal to that Electric Light Plant, how do they get it?

A. My recollection is, there is a spur track runs in between the plant.

Q. Then, the Electric Light Plant furnishes the railroad with freight, don't they?

A. Yes, I should judge so.

Q. In the case of Baker and Holmes Grocery Company, is there any track in there at which they can load and unload their merchandise?

A. My recollection is, there is a track running right along by their warehouse.

Q. Baker and Holmes Company furnish them with freight?

A. Yes, sir.

Q. And Chase and Company?

A. Yes, sir, Chase and Company, and the ware-

houses directly on the other side, and they have warehouses adjoining them right there in the fish business.

Q. How do Chase and Company get their stuff to and from the railroad?

A. Well, they are right there handy you know, they truck a good deal of it and some of it I presume is hauled over. It can be trucked over, they have a platform there between the warehouse and the landing place?

(That's all.)

(Witness excused.)

MR. ABRAMS: I file this map in evidence including the Electric Light Plant.

Thereupon the Petitioner to further maintain the issues upon its part produced and caused to be sworn as a witness, one, J. I. Wilson, who testified as follows:

J. I. WILSON.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. J. I. Wilson.

Q. Where do you live?

A. Miami.

Q. How long have you been living there, Mr. Wilson?

A. About twelve years.

Q. Are you engaged in the real estate business?

A. Yes, sir.

Q. How long have you been engaged in that business?

A. I think about six years, about six years.

Q. Did you in the early part of 1908, Mr. Wilson, together with Mr. Huddleson and Mr. Morse, examine such lands contained in this report?

A. Yes, sir.

Q. Taking this Biscayne Bay front, Mr. Wilson, sixteen hundred feet valued at five hundred dollars a front foot, state to the Court whether or not you think that was a reasonable value at that time?

A. Why, I think it was, yes sir.

Q. What do you think at the present time?

A. Well, I don't know that it is worth much more now than it was worth then.

Q. You think it is worth any less?

A. No, I do not.

Q. Now, you valued this portion of that thirteen hundred and fifty feet at twenty-five dollars a foot, was that a reasonable estimate at that time?

A. Well, I don't think we valued that quite high enough at that time.

Q. What do you think it is worth to-day?

A. Well, the only thing that I can base my calculation on there, Major, is on the sale that was made there.

Q. Do you think you could sell that tract for anything approximately what it sold for adjoining it?

A. Well, I can sell a good deal of it.

Q. Take the whole of it, take the entire thirteen hundred and fifty feet, do you think you could sell it on the basis of the present price?

A. Well, I believe we can get two hundred dollars a foot for it with all the Riparian rights and privileges.

Q. Now, take the other land that you valued at that time, has there been any increase or decrease in the value of that property?

A. There has been an increase.

Q. About to what extent do you think?

A. Well, at least, fifty per cent.

Q. At least fifty per cent?

A. Yes, sir.

Q. Does that cover your entire—That would be an average for the entire land surveyed by you?

A. Of the land on the water front, you understand.

Q. I understand that.

A. Yes, sir.

Q. You heard Mr. Huddleson testify, did you not?

A. Yes, sir.

Q. Are you familiar with those figures and sales that he gave from his testimony?

A. Yes, sir.

Q. You know that they are correct as stated by him?

A. The only correction I could make to his testimony, would be in regard to Cook. Now, I talked to Mr. Cook and asked him what he would sell me one hundred and twenty-five feet for, and he asked me what I wanted it for. I told him I did not know what the man would do with it. He says, "Well, I would not consider under fifty thousand dollars, I don't know whether I would consider that or not." Now, the land I was talking to him about had practically no improvement. The improvement on it, he had a dock and that dock extended back from the river about seventy-five feet. There was a warehouse that I suppose cost fifteen or eighteen hundred dollars. That was about all the improvement there was on it.

Q. There was only a hundred and twenty-five feet that you wanted?

A. Yes, sir.

Q. What is your opinion as to the comparison of value on the Miami river as compared with this sixteen hundred feet?

A. Well, you can get here with a deeper draft boat than you can here (indicating), and coming in here, coming into the river, you would have to make a bend, and it is almost impossible for a sailing boat to come into the river, that is a sailing boat of any size.

MR. NEEDHAM: You mean under its sails, of course?

A. Oh, yes.

THE COURT: How wide is the river there?

A. I should judge the river is about two hundred and fifty or three hundred feet wide.

THE COURT: Q. No wider than that?

A. No, I don't believe it is. Now, there is a little difference in the width of the river, but I don't think it is over, I should say two hundred and fifty or three hundred feet.

MR. ABRAMS: Do you know what the width of the channel is, the water channel that runs parallel with this?

A. Well, I think the channel is here (indicating) about a hundred feet. It may be a little more than that.

Q. You don't know what the size of the basin is that has been dug?

A. Well, I think the basin is, I should judge, three hundred and fifty feet.

Q. There is a considerable amount of main land all in here, isn't there?

A. Yes, sir.

Q. Now, Mr. Wilson, within these railroad lines, on three sides and the Bay on the other, what has been the average increase of property within that area within the last four or five years?

A. Well, I think it has all doubled, and some of it more than that. I know that lots we have valued in there at a thousand or eleven hundred dollars, that can't be bought now for less than twenty-five hundred dollars. So that is more than doubled.

Q. Lots that you have valued of the railroad?

A. Lying right in here (indicating), yes, sir.

Q. You couldn't buy them now for twenty-five hundred dollars?

A. We have some in there at twenty-five hundred dollars.

Q. Adjacent to the land that you have valued?

A. Yes, sir.

Q. And you gave a fair valuation in the early part of 1908 of those lands you valued for us?

A. Yes sir, when I valued those, I valued them at what we had property in that vicinity for sale at.

Q. Now, property in that vicinity you have listed for twenty-five hundred dollars?

A. Some of those lots at twenty-five hundred. We haven't very many in there for sale, for less than twenty-five hundred, and we haven't but a few in here.

Q. How about the values along here (indicating).

A. I don't think these values have increased as much in here as in here (indicating).

Q. That is north of the railroad line?

A. Yes, sir.

Q. They have not increased so much?

A. No, sir, I don't think so.

Q. About how much do you think?

A. Well, I think they have increased fifty per cent.

Q. Now, as to the railroad, has there been any increase in values?

A. Now, west of the railroad in here, is in colored town. We have no values in colored town.

Q. Now, all east of Fourth Street, that is all white?

A. No, sir, Sixth Street, between Sixth and Seventh Street, lined right here.

Q. All that on the other side is colored?

A. Yes, sir, that is in here (indicating). It is white in here (indicating).

Q. Now, south of that line in the white territory, what has been the increase in value?

A. When we put the values on those lots four years ago, there was very little sale in there, and I don't know of any lots in there now. They are worth a thousand or eleven hundred dollars.

Q. That is the territory that lies west of the railroad and south of the dividing line between the colored and the white?

A. Well, I would not say that these lots on 7th Street was worth a thousand dollars. I would say these lots along here (indicating). Now, the lots between 7th and 8th Streets, those lots can be bought for I should judge, seven or eight hundred dollars.

Q. But south of that, south of 11th Street, those

lots you say are a thousand or eleven hundred dollars?

A. Yes, sir. I don't know of anything in there for less than that.

Q. What could those same lots have been bought for, that those that were in the market in the early part of 1908?

A. I don't know that I could tell you, Major, west of the railroad. I put those valuations on lots that we had east of the railroad.

Q. Mr. Wilson, you have heard Mr. Huddleson's testimony, I can shorten it by asking you generally, do you agree with his calculation as to those values except as stated by you?

A. Yes, sir.

(That's all.)

Cross-examination.

MR. BOGGS: Q. Mr. Wilson, do you know of your own knowledge whether the railroad company owns all the lots that you have valued there?

A. I don't know about that, Mr. Boggs.

Q. You and Mr. Huddleson are partners in the real estate business, are you not?

A. Yes, sir.

Q. You and he reached your calculation on the same basis?

A. Yes, sir.

Q. The main land that you speak of as being in front of this strip here (indicating), could you indicate on your map where it is?

A. Well, it starts in I think right here, between Third and Fourth and runs down just about to that dock. It don't run quite that far, the dock don't, but that is out in front of the basin.

Q. The main land that you speak of as the bulkhead and dock, is not on the Florida East Coast Railroad?

A. Yes, sir.

Q. Haven't you and Mr. Huddleson a warehouse down on the river there near the railroad dock?

A. Yes, sir.

Q. You leased that from the railroad company?

A. We owned the warehouse and leased the ground.

Q. Pay them a ground rent?

A. Yes, sir.

Q. And that is included in the Riparian Rights that you value there, is it?

A. Yes, sir. Our warehouse is right there.

Q. In making your calculation based on that scale at the foot of 12th Street, that thirty-five foot piece that was sold there, was the only piece that could be bought on the whole water front of Miami, wasn't it?

A. Yes, sir.

Q. Don't you think, in fact, that it was the only piece that could be bought might have influenced the price at which it was sold above the normal level?

A. Well, I don't know about that, there is a lot of people that want dock room that can't get in there and buy it. It could have been sold for more than that, in fact, I am told he was offered eight thousand dollars for it after he had got his deed.

Q. You don't know that to be a fact?

A. No, sir, I don't know it to be a fact.

Q. And that sale was a little less than two hundred dollars a front foot, wasn't it?

A. Yes, sir.

Q. When you made that valuation, you were going on the assumption that this land marked, "Bay Park" was a part of the land you were valuing. You will notice along Bay front, there is a strip marked, "Bay Park," you included that in your valuation?

A. The land that was already there, the land that was recently there.

Q. Yes, sir. This little strip like this?

A. Yes, sir.

Re-direct examination.

MR. ABRAMS: Q. You say you leased ground from the railroad company?

A. Yes, sir.

Q. Did you furnish them any freight?

A. Yes, sir.

Q. Miami is an extensive fishing station, isn't it?

A. Yes, sir.

Q. Your dock is near their track, is it not?

A. Well, it is three or four hundred feet from their track. And we have to haul everything we send by freight or express, by wagon around about a quarter of a mile to the depot.

Q. Where is the freight depot?

A. It is right close there, but our dock is here (indicating). We have to come up here and run down that way and then run down that way to the depot.

Q. Why?

A. Well, we could if we run them across that way on trucks (indicating). We could do that. You can run it on hand trucks through there.

Q. Are you in any way connected with the Florida East Coast Railway?

A. No, sir.

Q. Are you employed by them in any way?

A. No, sir.

Q. Have you any interest in the result of this suit?

A. No, sir. In fact, I don't know what the suit is about.

(That's all.)

(Witness excused.)

Thereupon the Petitioner to further maintain the issues upon its part produced and caused to be sworn as a witness, one, C. B. Tatum, who testified as follows:

C. B. TATUM.

Direct examination.

MR. ABRAMS: Q. What is your name?
A. C. B. Tatum.
Q. Where do you reside, Mr. Tatum?
A. Miami, Florida.
Q. How long have you lived there?
A. About twelve years.
Q. Mr. Tatum, are you familiar with the real estate values in Miami?
A. I think so, I am in the real estate business, I am engaged in that business and have been for some years.
Q. Can you state whether or not in this territory (describing on the map from the Miami river along the line of the railroad running north, then running east to Bay Biscayne, back to Miami, up the Miami river)? Can you state what increase if any, there has been in that territory for the past five years?
A. There has been a very substantial increase in all of Miami and particularly in that territory.
Q. But, first taking up that section particularly, before you go to any other, how much would you say would be the percentage increase in that territory?
A. Why, generally speaking, I should say there has been at least one hundred per cent increase in the four years.
Q. Now, just point out generally all over town, north of the railroad as well as west of the railroad, and give us your idea of what the increase has been in values.
A. In all, this territory I think from Sixth Street south to Fourteenth west as far as Avenue "D," any way, there has been one hundred and four per cent increase, on a good deal of that property in that length of time. I think there from Avenue "D" to the railroad I am not really familiar with that, I

have not handled any property in that territory, a little west of Avenue "D" in some time, but I think it would be at least fifty to seventy-five per cent in that territory.

Q. What would be the increase in your opinion, of the railroad track to-day?

A. North of the railroad track, to the city limits, or to the Bay?

Q. Is that the city limits?

A. Yes.

Q. Or to the city limits.

A. Well, I think it is a hundred per cent fully, in there.

Q. Are you familiar with this frontage, take the dock of the railroad company?

A. I know its location more or less, I am more or less familiar with it.

Q. You have heard the testimony of these gentlemen, what is your estimate of the valuation of that property with its deep water frontage?

A. Well, I should say it is worth about seven hundred and fifty to a thousand dollars a front foot.

Q. At this time?

A. Yes, sir.

Q. Now, take the property from 12th Street to 8th Street, what would you say the value of that water front a foot is?

A. Well, from two to three hundred dollars a front foot.

Q. You think you could sell it for that?

A. Yes, sir.

Q. Mr. Tatum, what is your value of the river frontage on the north side of the river and the water front side?

A. Well, that would vary quite considerably owing to the distance up the river. I think the water front east of Avenue "D" bridge is worth four to five hundred dollars a front foot.

Q. Well, now west of Avenue "D" bridge, in the

vicinity of the railroad bridge, what would be a fair price, a fair present valuation of those frontages?

A. I should say about two hundred dollars a front foot there.

Q. You have not made these values for the railroad company?

A. No, sir.

Q. Are you in any way employed by the railroad company?

A. No, sir.

Q. Any interest in this suit?

A. No, sir.

Q. Any connection at all with the railroad company?

A. None at all.

(That's all.)

Cross-examination.

MR. BOGGS: Q. In valuing that water front where the dock is, Mr. Tatum, what have you got to base an actual as distinguished from a speculated value on it?

A. Nothing that I know of to fix the actual values except the values of other water front properties. The prices that they can be sold for and so forth.

Q. Well, have other properties been sold from seven hundred and fifty to a thousand dollars a front foot?

A. No, none have been sold. However, the depth of water and the improvements would increase the valuation there, because of the extraordinary development which has been going on by changing the basin.

Q. But you have no actual transfers of real estate to form a comparison with that value have you, or a similar sale?

A. Not with similar improvements on it, but we have the actual of which sales can be made and have

been at such and such a price, which I fix the value on this only by comparing the additional improvements and values in my opinion.

Q. Isn't it a fact that there is less commerce at that Terminal dock now than there was in 1907 and 1908?

A. Why, I am not sure of that. I believe there are less ships arriving than there were at that time.

Q. In fixing that valuation, state just exactly what real estate you valued there at seven hundred and fifty dollars to a thousand dollars a front foot, give me a description of it.

A. Well, outlined by these lines, opposite the center of block forty-four beginning at the east boundary line of Bay Park.

Q. At the east boundary line?

A. I don't know just where the docks are located, whether they are on that track or east of it.

Q. Well, do you mean to include all of the real estate lying east of Biscayne drive and south of the middle of block forty, down the south side of Eighth Street?

A. Yes.

Q. Do you make any difference there between the part that is filled out and used as a wharf and dock and the part that is not so filled?

A. Well, practically none. I understand it was all developed, if I understand it correctly, by deep water in front of this wharf, and that is where I placed the values on account of the depth of the water more than any improvement.

Q. Do you know whether these lands belong to the Florida East Coast Railroad Company or not?

A. Not positively.

Q. You are just giving them at what you think they are worth regardless of who owns them?

A. Yes, sir.

Q. What would you say had been the increase in values since 1908 of lots lying between the railroad and Sixth Street?

A. Along here you mean (indicating).
Q. Yes.
A. About fifty per cent.
Q. And you will say the same for lots lying between Avenue "D" and the railroad track?
A. Yes, about fifty per cent.
Q. When you say, in your opinion, the frontage along the river is worth two hundred dollars a front foot, what depth do you attach to that?
A. From one hundred and fifty, about the uniform size of Miami lots, fifty by a hundred and fifty feet, we figure on that basis.
Q. Were you influenced in forming your opinion as to the value of the strips between Biscayne Drive and the Bay here south of Eighth Street, by a sale of thirty-five feet that was made at the foot of 12th Street not long ago?
A. Why, perhaps to a certain extent, together with what I know they are asking for small tracts.
Q. Where are there any small tracts?
A. North of the city limits and along the river at different points. I mean when I say small tracts, water front tracts.
Q. What are they being held at north of the city limits?
A. I sold a tract something near half a mile north of the city for seventy-five hundred dollars cash. Eighty-four feet front.
Q. That was about ninety—
A. Something over ninety dollars a front foot.
Q. What was the depth of that lot?
A. It was two hundred and fifty-seven feet.
Q. Don't you think that the width of that strip between Biscayne drive and the Bay there is too narrow to carry any such value?
A. I think the Riparian Right is the value of that strip. Just as it was in the case of the thirty-five foot strip here.
(That's all.)

Re-direct examination.

MR. ABRAMS: Q. Is it not a fact, Mr. Tatum, that east of this so-called Bay Park, a very large part of this eighteen hundred feet is made ground filled in?

A. Yes, sir, a considerable portion of it.

Q. Now, is it not a fact that the old railroad building that was in the middle of Bay Park has been moved on this made ground?

A. Yes.

Q. Now, then, taking the Bay line as it stands itself, and excluding the Bay Park, just as it stands today, with its water there and its made ground, wouldn't you change your opinion as to the value of that property?

A. No, sir.

Q. Is it not a fact that the deep water runs parallel with this sixteen hundred feet and gradually goes further off from the shore?

A. Yes, the channel works out from the shore.

Q. About how far on this line on this thirteen hundred and fifty feet frontage is it to deep water, to the channel? About how much approximately if you can state?

A. I don't know, probably fifteen hundred or two thousand feet.

Q. Where these docks are, this dock here, the steamship comes right along here (indicating).

A. Yes, sir.

Q. And the channel runs right along that sixteen hundred feet?

A. The basin, yes, sir.

Q. Now, can you approximate the depth of water along this front, this thirteen hundred and fifty feet front to this deep water here?

A. I think it runs from about one to four or five feet deep. It is shallow in there.

Q. That land that sold for ninety-eight dollars a foot, how far is this north of the city?

A. A little less than a half a mile north of the city.
Q. How far is it to deep water?
A. Well, I don't know. I think it is two or three thousand feet out to the channel and it is shallow all the way out.
(That's all.)
(Witness excused.)

Thereupon the witness J. R. Parrott was recalled, and having been previously sworn, testified as follows:

J. R. PARROTT.

Direct examination.

MR. ABRAMS: Q. Mr. Parrott, are you acquainted with the company known as the Model Land Company?
A. Yes, sir.
Q. Have you any relation with it?
A. I am President of the Company.
Q. Who is the principal stockholder of it?
A. Mr. Flagler. It is a company organized expressly for the purpose of holding and owning such lands as the railroad company did not actually need, and that could be sold.
Q. Now, I want you to look at this frontage of these lots in blocks 106, 97, 86, 77, will you state what these lands are held for?
MR. NEEDHAM: One moment, now are you testifying to those lots in the Model Land Company?
A. At the present time, yes, sir.
MR. NEEDHAM: Well then, I object to that testimony. They don't claim to be in possession of it, and therefore it is simply a question of legal title.
THE COURT: I will admit it subject to your objection.
A. We have at the present time, I think it is be-

fore the City Council, by our attorneys, for the closing up of different streets, that is the one thing that is holding us back, for the purpose of building a new station on this property. We are on this spur which was all right, as long as we went simply to Miami, but now we want to get on the main line, and we have taken that tier of lots from 7th Street to 11th Street, and the reason Mr. Carter's map does not show any record of ownership is found in the fact that we had to buy some lots in there from several parties. But four or five years ago I gave instructions to the land department to reserve all property that the Model Land Company had title to in that series of blocks between 7th and 11th Streets for station purposes.

Q. What has that tier of lots been regarded as ever since?

A. Why, as a site for the new passenger station; we own everything with the exception of the lot on the corner of 7th and two on the corner of 11th.

Q. Why did you have to get these three lots that are marked on this plat by Mr. Carter that have been recently bought?

A. Well, simply because we had to have them in carrying out this plan of the passenger house; and they were not owned by our people, and we had to acquire them. We tried to acquire these two corner lots but the values were higher than we could afford to pay and we could get along without them, so we did not acquire the two corner lots.

Q. Now, at the time in 1908, at the time you had these values made, this whole tier of lots was held for station purposes?

A. At the time we had the values made, in 1908? They have been held for four or five years; ever since we got through to Knights Key, before we got through to Knights Key in fact we were contemplating this change, but we have been kept back for first one purpose and another.

Q. Well, you say there is now pending before the City Council a bill to close those streets?

A. Yes, sir, 8th, 9th and 10th to Avenue E, and the opening up of a new street, parallel with E from 7th probably through to 11th.

Q. You are to open that up?

A. We are to open that up and pave it.

MR. HUDDLESTON, a witness who testified previously, stated to the Court that he would like to correct one statement in his testimony, in regard to the depth of the water, instead of saying eighteen feet, it was twelve feet in the basin.

Q. Now, Mr. Parrott, this land on which you own your docks, I think extends from here (indicating) to somewhere here, is it not, thirteen hundred and fifty feet?

A. Our docks are right in here at 6th Street, this basin in front of it.

Q. And you own all the way here (indicating)?

A. All the way down to the north side of 12th Street, with the exception of that thirty-five feet in there; we don't own that thirty-five feet on there.

Q. What is your purpose of holding this frontage, what do you expect to do with it, what are you holding it for?

A. Why, a part of our general plan contemplates the extension of this basin to the south, and the filling up between the basin and the bay front here of land, and extending our yards and terminals and warehouses on to this frontage. We are very much limited at Miami for yard room to-day, and that is one of the causes of extensive operation, and when they are constructed there it will give us more yard room. We are contemplating doing that as we carry out our contract with the Government, as well as make some yard room at other places.

Q. Now this long lot of land in here fronting on the river, for what purpose do you hold these lots?

A. We own everything there except that little

square, my recollection is that would be about five hundred feet wide; I was looking at it a few days ago, with the exception of that little square, we deeded to the Hotel Company.

Q. You don't own that little square, do you?

A. No, sir; we don't own that little square.

Q. What do you hold this for, for what purpose do you own the lands?

A. This property in here, we are holding it with a view of getting tracks up in here, and cutting this hill down and making that fill and moving our coaling shed and plant from that point to this plant so as to give us more room up here for passing, sidings. I had application this morning to lease one hundred and fifty-three feet of that frontage for dock purposes in connection with our tracks, I can't lease it, it is the only available space we have in Miami.

Q. Then everything here is held for railroad purposes?

A. Oh, absolutely, yes, sir.

Q. And everything along here (indicating) held for railroad purposes?

A. Yes, sir. We couldn't well carry out our contract with the Government unless we had that frontage there.

THE COURT: Q. What do you refer to when you speak of the contract with the Government?

A. Well, we have spent in the making of water on Biscayne Bay, we had about seven and a half feet at the bar when we entered. Our company has spent something like three hundred and fifty thousand dollars in deepening the water to the bay; we carry a draft of nearly nine feet up to that dock through the mouth of the river, I don't think there was over six feet at the mouth of the river when we went in there, and we dredged for a distance of ten miles to Cape Florida. We have got one channel there, I think the main channel is about two miles where we had an average depth of six feet, we had about two thousand feet of rock in there, we have spent some-

thing like three hundred and fifty thousand dollars in making those channels to get the water frontage on the bay, and now we have practically twelve feet of water from the bar. The government has already now spent about three hundred thousand dollars and some part of another appropriation. The first appropriation made by the government was made conditioned upon the railway company's doing the work on the inside if the government did the work on the outside; the government made the cut into Norris' cut, directly opposite Miami into the bay, and made the jetties on the outside, and carried it I think about a hundred and fifty feet into the bay, and we took it up at that point and did the digging across the bay, and we are under contract to get eighteen feet of water, and make a basin here five hundred feet wide and sixteen hundred feet long, in front of the railroad dock.

Q. Now, Mr. Parrott, before that was done, what depth or draft of vessels could get into Miami?

A. Not much over six feet, six or seven feet.

Q. Do you know what the draft of the steamers were that moved to Nassau?

A. They draw very close to eleven feet, we built them purposely for that run, the first year we ran in there we had to tow with lighters down from the bay.

Q. Could you operate to Nassau with these boats if this work had not been done?

A. No, sir; not with those boats, we had a private line there and part of it had been done with that line. We had a vessel drawing seven and a half feet that we brought in around the cape, and we carried her up the river on that seven and a half feet, but we had done some work in the river previous to that, or she couldn't go up the river.

Q. Now, is it not a fact there are a large number of private yachts and sailing vessels enter now every year that could not have entered but for that work?

A. Well, I couldn't say as to that; there are a large number of yachts in the bay, but what their drafts are I do not know. There has been an increase in the movement there, but whether it is the reason of that I don't know. I should say that the vessel that the Cook Steamship Company had run in for some little time drew more than that, and they could not have entered but for that water.

Q. What steamship company is that?

A. That is a company that operated for a while between Jacksonville and Miami.

Q. Where did they dock?

A. First at Cook's dock on the south side of Miami, and later at our dock.

Q. Are you compelled to receive all vessels that wish to dock there?

A. We have always felt that we were, and in addition to that the contract with the government requires that we shall.

Q. Now, will you please explain why it is more valuable to your company to extend—I understand your purpose is to put warehouses—

A. Warehouses and storage tracks, yes, sir.

Q. What sort of warehouses will you put?

A. Well, we have got a half a dozen warehouses on the line there today, and warehouses of similar kind for storage, for instance a company is doing a large merchandise business and wants a warehouse right at the tracks, we have the warehouse and rent it to him right at the tracks, and it permits him to store his property in a better place.

Q. Just like Jacksonville, where the railroad companies do a regular warehouse business?

A. That is what it would amount to. Very frequently too, you know, they get stuff in in car load lots and ship it out in small lots to local stations from those warehouses.

Q. And they can load and unload right there in their warehouse?

A. Yes, sir.

Q. Just as is done in Jacksonville?

A. Yes, sir.

Q. Now, do you consider that an excessive amount for that purpose?

A. Which property are you referring to now?

Q. I am now on the bay?

A. Oh, no, no, I don't consider it an excessive amount, if anything it is a little short. In other words, it ought to be instead of sixteen hundred feet it ought to be twenty-five or six hundred feet to get the full benefit out of cheap operation.

Q. And you have reserved that absolutely for that purpose?

A. Yes, sir.

Q. Now, in regard to this, you say is for the warehouses, and this is for the storage (Referring to the river front)?

A. Yes, sir.

Q. Is that amount you need, is that excessive?

A. I don't think so.

Q. Is it enough?

A. Well, at a town at Okeechobee, a new town, for storage and freight yard I asked for a strip five hundred feet wide and three thousand feet long. Now, that is, I remember it here, is about sixteen hundred feet, our yards, we are now compelled to start our cars out down here through this long yard, instead of having them in a contracted area we have got to go half a mile up here to get the car, and it is bad business.

Q. Your idea then is to put tracks in here?

A. Yes, sir.

Q. Now, Mr. Parrott, you say that your facilities at this time are confined to this strip of land along here (indicating)?

A. Yes, sir; that is largely, we have got tracks at different points; for instance we have an additional track in here; when we get out on the main line we will have these tracks in here for storage or warehouses.

Q. Now, you come into town at the present time on a spur?

A. No, we run up here on the "Y."

Q. And your purpose is to have the station practically on the main line?

A. Instead of at the end of the switch.

Q. Mr. Parrott, this plat furnished by Mr. Carter in which your line of ownership on what is called Bay Park—

A. Bay front.

Q. Now, you own everything right along here, as shown here, do you not? There is no break between your riparian ownership?

A. Oh not in our riparian ownership. There is some break, I think, a little piece in here from Second street to Seventh street, a little piece in here, given to the city as parks, but the riparian rights are ours.

Q. From Second street this way?

A. Yes, sir, and then we come out here—with the exception of seventy-five feet, something of that kind, up to the north line of the city, and we have the entire frontage down to 12th Street, the riparian rights.

Q. Now, then, this entire frontage is what you reserve for your various purposes?

A. Yes, sir.

Q. How do you get up here, are there any tracks up here?

A. Yes, we have I should say two tracks in here and that one track down to the warehouse.

Q. And then your track does cross this avenue?

A. Crosses that avenue, yes, sir.

Q. Is there any drive way that is in here, with teams?

A. Oh, yes, you drive in here, on this side of the track across the track and drive in here; teams and busses and carriages come in here to meet the trains.

Q. When this wharf is completed and warehouses, the teams and so on could drive in there to receive and deliver freight?

A. Oh yes, at all points, they won't come around here (indicating), they will come in through this street.

Q. That would enable business men to receive and deliver freight for shipping and other purposes without having the long hauls, just as they do in Jacksonville?

A. Yes, sir.

Q. Is there any other place that you could do that at Miami except that, without going to the same enormous expense that you have already gone to in relation to this?

A. Why, not without going outside of town for a mile or two, something of that kind, to get the area, but there is no place in town that we could get that would be accessible to the business as this would be.

Q. The town is developing quite rapidly?

A. Yes, sir; it is growing very fast.

Q. Mr. Parrott, you testified yesterday, as to the Steamship Company. Can you state approximately what amount of working capital your company has in its business?

MR. NEEDHAM: One moment, what steamship company are you referring to?

MR. ABRAMS: No, outside of the steamship company.

MR. NEEDHAM: What steamship company are you referring to?

MR. ABRAMS: P. & O. Steamship, he testified yesterday to the value of that, he had five hundred thousand dollars of stock. But I am excluding that now.

Q. Can you state about, approximately, how much working capital your company has?

A. I should say at present we are using something like close on to seven hundred thousand dollars.

Q. Isn't that subject to fluctuation in values?

A. No—yes, it is too, some of it. We are having to pay a dollar a ton, the last few days, on coal, as that coal comes in it is worth a dollar a ton more than it was a few days ago.

Q. You have got a working capital of seven hundred thousand dollars?

A. Yes, sir; in our different supply departments.

Q. Mr. Parrott, it is alleged and set forth in the petition that your company paid four and a half per cent last year on its first mortgage bonds, and four per cent on the second mortgage bonds, how is the four and a half per cent fixed?

A. Fixed by the mortgage.

Q. How is the four per cent fixed?

A. Four per cent has been fixed annually since the mortgage was made, by the directors.

Q. Now, are you familiar with the rate of interest on money in Florida?

A. The legal rate is eight per cent and it varies. My relations to the banks would familiarize me to some extent with the rates, and the rates vary, but generally speaking, I am president of the Florida National Bank, our rates run between seven and a half and eight, per annum average, we are making some loans where we are not getting as much, but those are a few of the preferred customers, and the majority of them are at eight, most of them are at eight.

Q. Do you lend it at four even to preferred customers?

A. No, sir.

Q. Mr. Parrott, in the matter of this railroad negotiations, have you had to borrow money outside of the bonds?

A. Oh, yes.

Q. Have you ever had any at four per cent?

A. I don't remember, Major.

Q. What do you usually pay?

A. Sometimes it will run very close to six, sometimes five, five and a half, sometimes four and a half. But taking the average, I don't remember what we have paid. The comptroller would tell you that.

Q. Is four per cent a large interest in this State to pay on money?

A. Oh no, it would be considered a very low rate of interest. I don't know of any loans in the State at four per cent, except that was what this loan during last year, what these bonds brought.

Q. I wish you would explain those two mortgages to which you referred?

A. We don't borrow any money but very rarely. I remember in 1897 we borrowed one hundred thousand dollars, we paid six per cent.

Q. But you said you had paid for money from four and a half to six per cent?

A. We borrowed that in New York.

Q. Oh, it is for current purposes?

A. Oh, for construction and current purposes.

Q. Not for repaying and bond loan?

A. Oh no, just for current operations.

Q. Mr. Parrott, have you familiarized yourself with whether or not four per cent bonds on a Southern railway has the value of four per cent on a Northern railway, whether it would bring par or you could sell it anything near par?

MR. NEEDHAM: Now, that is not a proper question, your Honor, if he asked him whether they tried to sell their bonds on a four per cent basis, I don't object, but to ask him the general question whether bonds of a Southern railway are worth anything at four per cent, or what they are worth.

THE COURT: I think it is a circumstance he can testify to.

A. Almost invariably in trying to sell our bonds at four or four and a half, we have run into the necessity of being able to show that our net earnings were double the amount of interest that would be called for by the bonds. In other words, when we sold our last bonds, the only bonds we have ever sold to anybody outside of our people, the four and a half bonds, ten million—

MR. NEEDHAM: That was the mortgage bond?

A. Yes, sir.

Q. What did you get for that?

A. We got ninety-six for that. When we sold those bonds the Morgan people said to us that we must show that we were earning nine hundred thousand dollars in order to make those bonds worth in the vicinity of par. If we want to get par for them we must show that we make double at least of the interest charges in our earnings.

Q. Yet you had to sell at ninety-six?

A. We sold those at ninety-six.

Q. What did you sell the second mortgage bonds for?

A. We sold them at par and didn't have to show anything.

Q. Sold them to Mr. Flagler?

A. Yes, sir.

Q. He paid one hundred cents on the dollar?

A. For that twenty million, yes, sir.

Q. Now, what is the present stock capital of the East Coast?

A. Five million.

Q. Who owns the most of it?

A. Mr. Flagler.

Q. What did he pay for that five million of stock?

A. Well, as I told you yesterday, there was two hundred thousand dollars of that stock that I didn't know anything about that came to us before the road was purchased. Now what the company got out of that I don't know. I presume they got cash, because the statute requirements of this State have always required that the stock shall be paid for in cash, and I presume it got cash.

THE COURT: Q. Cash or its equivalent?

A. Cash or its equivalent, yes, sir. Now just what that two hundred thousand dollars was I don't know anything about, but every dollar of stock that has been issued with that exception has been paid for at par, fully in cash.

Q. Except the item of two hundred and fifty thousand dollars credited to Mr. Flagler, in 1903, for dividends or interest on that stock which was

then a million dollars only, however, I think in 1894—

A. The first stock increase was in 1909, Major, at the time we issued the mortgage.

Q. Oh, yes, but have you ever received any dividend on the eight hundred thousand, that you know that par was paid for?

A. No, I would not receive any dividend, but we have not paid any dividend.

Q. Has Mr. Flagler ever received any dividend on that stock from first to last, amounting to five million dollars?

A. The only transaction that could be squinted at in that way was the transaction of two hundred and seventy-five thousand dollars. With the exception of that, not a dollar.

Q. From the time you have been with the road to the present time?

A. Yes, sir.

Q. Mr. Parrott, since 1907, have you had to increase the salaries and wages of your employees?

A. Oh yes, it has been done several times. We have just been through an increase now, beginning with the first of January this year. I say several times, I think there was one general advance in 1909, I don't remember anything more than that, of course that was a general advance, just as this advance on the first of January this year.

Q. Can you estimate what the recent advance will add per annum?

A. I have made no figures on that, I only have the figures of others. When the advances were made they advised me there would be something like one hundred and fifty thousand dollars per annum increase in wages. In 1909 or 1910, there was an increase of about seven and a half per cent on all wages.

Thereupon, at five o'clock P. M. the hearing was adjourned, to be resumed at nine forty-five o'clock A. M., Mar. 16th.

Thereupon at nine o'clock and thirty minutes A. M., court convened, pursuant to adjournment.

Thereupon the petitioner to further maintain the issues upon its part produced and caused to be sworn as a witness one George A. Miller, who testified as follows:

GEORGE A. MILLER.

Direct examination.

MR. ABRAMS: Q. What is your name?
A. George A. Miller.
Q. Where do you live, Mr. Miller?
A. New Augustine.
Q. That is a part of St. Augustine?
A. It is just across, it is a part of St. Augustine.
Q. What is your business or occupation?
A. Superintendent of Motive Power and Machinery.
Q. Of what road?
A. Florida East Coast Railway.
Q. How long have you been employed in that capacity?
A. Twenty years next October.
Q. State, Mr. Miller, the nature and character of the duties that you are in charge of?
A. In charge of the maintenance and upkeep of locomotives, cars and machinery of the road.
Q. What appliances have you for the performance of your work?
A. We have our shops and terminal facilities, engine houses, and such facilities.
Q. What extent of shops have you?
A. These here in St. Augustine and at such places as New Smyrna, Fort Pierce and Miami we have engine houses.
Q. State your equipment, machinery, etc., for the

performance of your duties, the character, and whether they are up-to-date?

A. We have the shop here in St. Augustine, and our tools when they were purchased were the best of the kind, and this summer we purchased a whole lot more that are strictly up-to-date.

Q. You have particular charge of the locomotives?

A. I give them more attention than I do any other part of the business.

Q. Could you state now, without your figures, how many locomotives you have in use on the line?

A. We have ninety-six total, and there are three in the shops undergoing general repairs. The rest are such as may be in the shops, or in today and out tomorrow, that is what is known as running repairs, a locomotive never runs a trip over the road but what something is done to it, keeping it in adjustment.

Q. Now then, of the ninety-six locomotives at this time, there are practically ninety-three of them in use?

A. Well, that would not be so strictly—yes, sir, they are practically all in use or extra ready to be used, except the four, five and nineteen, I believe are the numbers.

Q. Are those ninety-six locomotives, are there any of them now unfit for use, or will have to be abandoned?

A. No, sir; we have none of those, every one that we have contemplates repairs and putting right in service again. Of course you know every railroad has to have some engines in the shops, and I have tried to get our locomotives to their maximum efficiency. Of that number of locomotives I think there was about eighty that had the flues renewed in 1911.

Q. How many?

A. About eighty, there is not over twenty that need the flues reset, we reset them every twelve

months if we can, and right now I have two in the shops about ready to go out of these last engines, we have to have their flues reset.

Q. Now, how do you ascertain the requirements of repairs for these locomotives, how do you learn that they need repairs?

A. Why, we are continually inspecting them every time they run from point to point in this country, and the water conditions are very bad, they are turning out, and when the engines show poor service we take them in and we are working continually on those locomotives when they are not pulling trains, and in that way we manage to maintain them at their maximum of efficiency; we couldn't do otherwise.

Q. Are all of your locomotives of the same size?

A. No, sir.

Q. How do they vary?

A. Well, they vary in design and their power. The first engines we got was seventeen by twenty-four cylinders, eight-wheel pattern. The next we got was eighteen by twenty-four, eight-wheel pattern, and then we bought some ten-wheel engines, and then some Atlantic type engines, and our last ones are known as the Pacific types.

Q. What is the age of the oldest locomotive you have in use at this time?

A. Why, the first five we got in 1885, I could give you that correctly, I have got the cards in my pocket, I can refer to those.

Q. Well, find them for me?

A. They were built in 1888, engines one, two, three, four and five were built in 1888, seventeen by twenty-four cylinders.

Q. Well, have you ascertained what was paid for those locomotives?

A. Nine thousand, five hundred dollars. I am not going on the figures, but I have got a list that I gave to Mr. Gentry to enable him to arrive at what those engines could be duplicated for, and I supposed that

he had brought that along with him, and was disappointed to know he had not, and I phoned my office to bring them up.

Q. You say those engines are still in service?

A. Yes, sir; they are still in use.

Q. Can you recall without reference to your figures where those engines are working?

A. Right now?

Q. Yes, sir?

A. Engine one is doing service on the A. & W. Branch.

Q. That is a branch from New Smyrna to Orange City Junction?

A. Yes, sir.

Q. What service is it doing?

A. It is hauling passenger trains and mixed trains; the average trains are about thirteen cars, eight to thirteen.

Q. Now, is it hauling the weight that it was built to haul at this time?

A. It is not hauling that weight at this time, for the reason the weight is not there to haul, is not offered it, but if it was, the capacity of that engine with the present sized cars, which would be full load when she had about twenty cars behind it.

Q. But you have not got the business for it?

A. We haven't got the business for it for that line.

Q. What is the condition of that locomotive?

A. Why, that locomotive is in good order. If I had my flue list here I could tell you when it went out of the shop, but it was previous to January 1st, 1912.

Q. What is its ability for work?

A. Just the same as it ever was, we have kept them up.

Q. What have you done to those locomotives that enable you to keep them up to their maximum capacity?

A. Well, we are spending something like thirteen hundred dollars on that type of engine every year year on its maintenance.

Q. On each of them?

A. On each of those small ones, but the large ones we are spending twice that.

Q. No, but I am speaking of those small locomotives?

A. They average about thirteen hundred dollars.

Q. What is that for?

A. That is for running repairs, and maintenance.

Q. Explain to the court what you mean by that?

A. Well, running repairs, a locomotive comes in with a hot crank or the flues leaking, it keeps a force of men continually working on them. Every railroad has the same proposition, with us it may be a little different because of the sandy, straight, level country and the bad water conditions, but it keeps a force of men all the time doing that, and in order to maintain them and have that efficiency, we don't wait for the engine to be laid up but we do it now, and our repairs are one big running repair account. I might explain that some railroads buy a locomotive, make a practice of buying a locomotive and wearing it out, that is, running it until it won't run any longer, and then they put it in the shop and give it a general rebuilding. We don't do that, because we haven't got locomotives enough to do that with. We have got to make every locomotive do something, and therefore when a locomotive is incapacitated for its work, when it is at work, we get busy on it, working on it, let it be days or nights, and it is the only way I can maintain locomotives.

Q. Then I understand, that instead of waiting until the locomotive is incapacitated you repair and replace it immediately?

A. Yes, sir, as far as we are able to. Those three engines in the shop I told you about, have got to the point where I am not able to do a little now and a little tomorrow.

Q. That is general repairs?

A. Yes, sir; general repairs.

Q. Are those three engines belonging to this type that are in the shop now?

A. Those five. Engine one is on the A. & W. Branch; engine two at Miami extra ready to be used; engine three is working toward the shop for some boiler repairs, which can't be had at these outlying points.

Q. What do you mean by that?

A. Well, it is working coming this way, it is being towed this way. Engine forty is in the shop with the character of repairs that can't be had at these outlying points, and also five, five general overhauling, four and five constitute those, when three gets here it will not require what four and five required; it is coming this way from Miami.

Q. Now, what are the next type of engines?

A. The next type are fourteen, fifteen and sixteen, eight-wheel, eighteen by twenty-four cylinders, sixty-eight inch driving wheels. The previous ones I told you have sixty-three inch driving wheels. I have only two sizes of driving wheels on the road.

Q. When were these three engines bought, do you know?

A. In 1892.

Q. What are their conditions?

A. Their condition is good, except that I am working them all to the shops at the present time for the purpose of touching them up, looking them over and inspecting them, getting them ready to start the vegetable movement that is now moving with some large engines, with some Atlantic types. I want to get those types off and have them for the express and run them with fourteen, fifteen and sixteen, and take those Atlantic types and put them in the vegetable movement, which is coming on thirty days hence.

Q. Now, what would be the capacity of those three engines, can they do the business?

A. Yes, sir.

Q. Now, as to their working capacity, can you notice any difference between them than what they were when they were first purchased, in their hauling power?

A. There is no difference, because the hauling power of a locomotive depends on the steam pressure and the weight on the driving wheels.

Q. Have you got the same—

A. Yes, sir; the same engine is there.

Q. Will they haul the same weight that they did when they were purchased?

A. Yes, sir; they will haul the same weight for the reasons given.

THE COURT: Q. The life of a locomotive, do you calculate on the life of a locomotive under your system of repairs, or do you hold it will go on forever?

A. I don't figure on the life of these locomotives, because we keep them up all the time, we are rebuilding them constantly, I can't figure on the life as others do.

THE COURT: Q. Is there a progress in the annual cost of repairs?

A. Yes, sir; that is due to the increased wages, labor, and its increased inefficiency.

THE COURT: Q. There is an increase in the inefficiency?

A. Yes, sir, there is, it is marked. I will guarantee to take the same force of men that I had when I was general foreman for the Jacksonville, Tampa and Key West twenty-five years ago, and bring them here to work for me, and I will guarantee to do it with one-third the number of men I am trying to do it with now.

MR. ABRAMS: Q. The increase then results from the increased price of everything, labor and all?

A. Labor and inefficiency.

Q. Now, you have used the term "increased inefficiency," you bring them up to their maximum efficiency when you get through with them?

A. Yes, sir; if a locomotive is deficient in one minor part, the minute you remedy that it is good as it ever was for our purpose.

Q. These three locomotives you say would stand the same pressure?

A. Yes, sir, we have got one now down hauling heavy loads, it is at its capacity, of course, on the Key West extension, hauling marl for Mr. Crumm, and it is hauling heavy loads. It is true in locomotive operation that you have got to have the unit expressed in the locomotive as heavy if not heavier than any other one unit there is in the train that can start it. The power of a locomotive depends on the weight on the driving wheels.

Q. Now, what I am getting at, to put it in ordinary language, a locomotive of a certain size when first built has a maximum power of hauling a certain weight, does it not, dependent upon the cars, etc., ordinary cars, is that correct?

A. If the maximum is maintained you carry the same pressure it doesn't make any difference whether—if everything is in good order alright, you couldn't expect to haul the same train with less steam pressure.

Q. That is not the point I am getting at, you seem to misunderstand my point; a locomotive when first built of a certain weight and certain power is expected to haul a certain maximum weight, to have that power to do it, is it not?

A. It is built with that idea, yes, sir, and usually does it.

Q. Then at the end of fifteen or twenty years, that locomotive possesses the same power to haul the same maximum weight, and does it, what difference is there from the day it was built?

A. Well, the first day it is built, we have to break those engines in and limber them up.

Q. I am going to reach that presently, I am not doing it now, is it not a fact that a locomotive when first built is not efficient until after it has been worked for some time so as to break it in?

A. Yes, when a locomotive is first built until it is broken in and limbered up it will not run as fast, neither will it haul the load because of friction of parts, and when the locomotive gets limbered up and

gets broken in the new locomotive is as good as the older one in that respect.

Q. Now I come back to my proposition. You say these locomotives will stand the same pressure and will carry the same weight and are actually doing it, at this time, as when they were first broken in?

A. When we first got them, yes, sir.

Q. Now then, can you see any difference between them now in their present condition and what they were when you first bought them?

A. The only difference is they don't look as clean as they did when we first got them.

Q. I am speaking of their working capacity?

A. No, there is no difference.

Q. For all the purposes of this road then, what difference is there in the value between those two locomotives?

A. You mean as machines for doing the work?

Q. Yes, sir.

A. There is not any; they are doing the same work they always did.

Q. And you say these locomotives are doing the same work they always did?

A. They are doing the same work they always did. Of course we have heavier trains to haul now.

Q. Unquestionably. Of course a locomotive that is built with a maximum power to haul fifty tons or one hundred tons could not be expected to haul one thousand tons.

A. For such power as we put those locomotives to they are doing the same work that they ever did.

Q. Are you putting upon them now any less weight than you did when you first bought them, that is, are their capacity less?

A. Their capacity is not less; it may be we don't offer it to them same as—

Q. Oh, that is because of the business?

A. Simply because the business is not there to offer.

Q. On the main line there has been a large increase in the weight of the trains, have there not?

A. Yes, sir.

Q. On these divisions the weights of the trains—

A. They are approximately about what they were on the main line years ago when we bought these engines.

Q. And those engines are doing the work on those divisions just as they did on the main line?

A. Yes, sir; so far as it is offered to them.

Q. You now have accounted for eight locomotives, when were the next purchased?

A. There was two engines—

Q. One minute before you answer that question, can you tell the court what those three locomotives cost?

A. I can't tell you with any degree of accuracy, but as soon as that paper comes I can tell you. I can't tell you what those three particular ones cost, because I see two more bought in the same year, in the year 1892, mixed in with them, they are lighter engines, the fourteen, fifteen and sixteen.

Q. Those are the three we are talking about?

A. Yes, sir; those are the three we are talking about, and I see eighteen and nineteen was included with them as being purchased in the year 1892.

Q. The Comptroller, however, can give me—

A. He can give you that, or I can give it to you as soon as that paper comes.

Q. Very well, lets go to the next purchase.

A. Well, there were two engines bought in there, I am telling you that from memory, I can't just locate in what time they were purchased in 1892, but there was two of the seventeen by twenty-four inch, like that first type put in in 1892.

Q. Where are those engines, what are they doing?

A. Engine eighteen is operating a work train, I changed that the other day to get fifteen over on the Mayport division, and engine nineteen is in the shops having flues reset, and some other boiler work to enable it to conform to the United States Government requirements. We have to strip them, their jackets

off, and test them at stated intervals, it is to comply with the United States Government requirements.

Q. Those things have been rendered necessary by the requirements of the United States Government?

A. Yes, sir; that is an extra cost to this road any way that we didn't have before.

Q. It is in fact a betterment of the locomotive, is it?

A. Well, no, sir; I wouldn't say that it is a betterment; it is simply in the lines of safety, it adds nothing to it but the expense of it.

Q. What does it cost to do that as required by the Government?

A. I would say at least fifty dollars, and the engine is out of service for that time.

Q. Now the one on the Mayport division, what is its condition now at this time?

A. It is good.

Q. It is doing the usual work for an engine in that capacity?

A. Yes, sir; it is. We use a lot of those engines doing the roadway work, they have a maximum and minimum load, sometimes they have heavy work, and sometimes they have one and two camp cars going from point to point.

Q. Do those engines maintain the same maximum capacity that they did for which they were purchased?

A. Yes, sir; if they didn't do it I would soon get a complaint, from the Superintendent of Maintenance of Way.

Q. Now then, when were the next purchased?

A. There was a purchase of one locomotive, as I remember it, and still this list would indicate they were all purchased in 1893, 20, 21, 22, 23, 24, 25, 26 and 27 in 1893. That is the way my record shows it.

Q. Can you give what those cost each?

A. They cost a little more as they came later.

Q. How much was it, what was the capacity of those?

A. The capacity of those is identical with the first five we have mentioned; they are the same size, duplicates in every part. There is only four classes of engines on the road.

Q. What are those locomotives doing now?

A. Twenty is on the Key West extension for Mr. Crome; twenty-one is a work train, engine twenty-two is a switcher at Mayport; engine twenty-three come into the shops for some boiler work, I think the water got too low in it; twenty-four is switching in St. Augustine here; twenty-five is operating on the Titusville division. The maximum cars I notice were seventeen and the minimum was somewhere around twelve.

Q. Running from Titusville to where?

A. That is Titusville to Enterprise Junction, and I think now they are going now on the division from Maytown to Chuluoto.

Q. But it is at this time and has been?

A. It has been and is now.

Q. Does that division require as heavy train as the main line?

A. Oh no, sir; no, sir; they do not; they are within the capacity of that locomotive.

Q. Now, then, take the next purchase?

A. The next purchased were five ten-wheel type locomotives. They were simply the elements of the five first locomotivs incorporated into ten-wheel types. They cost more money as I remember, ten thousand five hundred dollars, in 1897, and then the company purchased two more.

Q. Now, what are their condition? What is the condition of those locomotives, state it generally?

A. Every one of them are in good condition except one that is an extra in St. Augustine; they are at work, every one of them.

Q. This one is just simply held as extra for work?

A. Yes, sir; this one is held for the Key West extension, as soon as we can work it down there; it is ready to go as far as I know.

Q. Do those locomotives maintain their maximum efficiency same as at the time they were purchased?

A. Yes, sir; and in addition to that we have increased their efficiency by remodeling them, re-designing them.

Q. Well, that now I think we ought to show, what did that cost?

A. What did that addition cost?

Q. Yes.

A. Forty-three hundred and some dollars.

Q. For what, each locomotive?

A. Each locomotive. They were a deep wood-burning fire-box and when those engines were purchased we burned pine wood for fuel, and it became necessary in the interest of economy to change this type of fire box engines into long coal burner locomotives, and in doing that we cut off the parts back of what is known as the "barrell," cut off the fire box, and put on the others, and each of those cost us sixteen hundred dollars, and then raised the boilers up. We also added to the tank, in replacement of the first tank that was a thousand gallons smaller, we put a five thousand gallon tank where we had a four thousand gallon tank, and of course we had to add a corresponding tender to conform with the trucks.

Q. To what extent did this work increase the efficiency of the machine?

A. The efficiency of a machine consists in hauling cars, and while we did not have any more boiler pressure, which I could not increase and we had the same size cylinders and same size driving wheels, increasing the weights on those driving wheels enabled us to haul in such places as the Jacksonville Terminal yard or over the bridge about four cars more; but the efficiency of the machine was increased in this way; it was originally designed to burn wood and then we burned coal, and the grate area was not sufficient to burn coal with the weight we were putting on that engine, we therefore put in coal burners, and we made some statistics one year to see, which showed

that we had saved nineteen thousand dollars in coal, and hauled two per cent more than twice the number the same engines were hauling.

Q. Now, you say all those locomotives are in use?

A. Yes, sir.

Q. All those locomotives that you have testified concerning, did they all have lamp or electric headlights when they first purchased?

A. Up to 1897 they all had oil lamps.

Q. Did you make any change in them?

A. Then in that year we purchased one and applied it to engine thirty-two as an experiment, and soon an order was given to equip the whole road, because it was considered safer to run locomotives with these headlights of electricity.

Q. You put them on all?

A. Every one except perhaps one or two engines, engaged exclusively in switching; the electric headlight blinds the men in the yard, and therefore we put milder lights.

Q. What did putting on those electric headlights cost you, do you remember?

A. Two hundred and fifty dollars; the oil lamp cost about twenty-five dollars. We replaced the oil lamp with the electric headlights.

Q. Then with the exception of a couple of your engines, you have replaced all these engines with electric lights, at an expense of two hundred and fifty dollars?

A. Yes, sir.

Q. That includes the labor of putting them on?

A. My recollection is that that is the list price, I am not positive about that, but it is in the neighborhood of two hundred and fifty dollars.

Q. Now, go on with the others. You have reached now those, is that the same general condition?

A. You have reference to these? I will say we remodeled fifteen out of seventeen of these locomotives.

Q. At an expense of four thousand dollars?
A. Forty-three hundred dollars.
Q. Now, what was the next batch?
A. The next batch are the Atlantic type locomotive, beginning on engine forty-five.
Q. When were those purchased?
A. They were purchased in 1904, they are nineteen by twenty-six—
Q. How many of those?
A. Twenty.
Q. Twenty in 1904?
A. No, sir; we only bought ten in 1904, forty-five to fifty-four inclusive. We bought ten of those, they are known as the Atlantic type engine, they have wood fire boxes, nineteen by twenty-six cylinders, eight thousand pounds on four driving wheels.
Q. What did they cost, do you know?
A. Sixteen thousand five hundred dollars, ten of them one hundred and sixty-five thousand dollars.
Q. What is their present condition?
A. Their present condition is good, they are all working, that is one in South Jacksonville and in other places, but they are all ready for business.
Q. Necessarily you have to have a number of engines that are not actually hauling anything?
A. Some days every one is out, and other days there are some that are not.
Q. Have you ever had them all running at one time?
A. Not this year, but I have had one day last year.
Q. Doing actual work?
A. They did actual work, of course I took one in the next day.
Q. Now these purchases in 1904, were all equipped with electric headlights?
A. Yes, sir.
Q. What is their capacity today in the matter of pressure hauling capacity as compared with 1904, when they were purchased?
A. It is just the same, because I haven't cut the

pressure down. They are called on to do the same work that they ever did.

Q. Now when were the next purchased?

A. In 1905, five of the same type of engines, fifty-five to fifty-nine inclusive; same dimensions and everything duplicates.

Q. Are their conditions the same as in 1905, when they were purchased?

A. Yes, sir; every locomotive I have got is in comparatively good condition.

Q. Now, when were the next purchased?

A. Engines sixty to sixty-four in the year 1906.

Q. How many were there?

A. Five.

Q. Those purchased in 1905, were the same prices paid as those purchased in 1904?

A. I think they cost more. My recollection is every lot of engines we got cost more. Those purchased in 1905, the first five you speak of, and the next five purchased in 1906, cost identically the same figures as the other five engines, sixteen thousand and something.

Q. About the same price?

A. Practically the same price.

Q. Now these last five which you say were purchased in 1906, now when were the next purchased?

A. The next purchased was the Pacific type locomotives, they are the Pacific type locomotives, 1908, they are twenty by twenty-six cylinders, their weight load is one hundred and eighty-nine thousand pounds, six thousand gallons tank, sixty-eight inch driving wheels. Beginning with those Atlantic types going all the way up they all have the same size driving wheels.

Q. What did those cost?

A. Ten of them cost one hundred and ninety-five thousand dollars.

Q. That is nineteen thousand five hundred dollars a piece?

A. Yes, sir.

Q. What is their condition?

A. Their condition is good.

Q. Any difference now between their hauling capacity?

A. No, sir; none whatever.

Q. When was your next purchase?

A. There are two locomotives in there that you have not called attention to, they are two switching locomotives, seventy-five and seventy-six, operated in South Jacksonville.

Q. When were those purchased?

A. In the same year, that cost was fifteen thousand dollars a piece, those two. Now, I don't know whether that is the list price, that is the contract price, or whether there is freight added to it to get it here.

Q. That is what it cost?

A. Yes, sir; fifteen thousand dollars a piece, those two.

Q. Now, those are switch engines?

A. Those are two switch engines.

Q. Purchased in 1908?

A. Yes, sir.

Q. What are their condition?

A. Good.

Q. Now, the next purchase?

A. In 1910, locomotives seventy-seven to eighty-two inclusive, same weight and all other dimensions as the previous ones.

Q. Those are the Pacific types?

A. Yes, sir.

Q. What was paid for those?

A. Five of them—there is an error in that figure, which my clerk discovered this morning, seventy-seven to eighty-two in this, one hundred and eight thousand dollars here for those five, and I think there was some freight or something that was left, to be added.

Q. Those cost over twenty thousand dollars a piece?

A. They cost somewhere near twenty thousand dollars, twenty thousand five hundred I think was the contract price, for them. I won't be positive about that.

Q. Now what are their conditions?

A. Good.

Q. What is the next purchase?

A. In the year 1911, engines eighty-three to eighty-seven, five locomotives, in the year 1911, ninety-four thousand dollars for the five, that is what that five cost us.

Q. What is the next?

A. The next is eighty-eight to ninety-two in the same year, they cost ninety-two thousand five hundred dollars.

Q. That is last year?

A. Yes, sir; in the year 1911.

Q. What is the next?

A. Those first five was on the original order, we had to pay that difference, had to have them.

Q. What is the next?

A. The next is engines ninety-three to ninety-seven, they were purchased in the same year, in the year 1911, we purchased twenty locomotives of the same type, Pacific type locomotives.

Q. Any more?

A. Well, there is—I have stated ninety-three to ninety-seven. Now then there is ninety-eight to one hundred and two inclusive, bought in the same year, at a cost that is figured here, it is not exactly correct, but we paid more for them, they have got the super heater which cost us more. They are practically the same engines with some necessaries to apply the superheater; they may be a little heavier, they are a little heavier, but the design has been all these years to make the same design.

Q. Now of the entire ninety-six locomotives, how many of them have been purchased since 1902?

A. How many were purchased since 1902?

Q. Yes, of the ninety-six?

A. I will have to count them. I think there was about forty-nine.

Q. See if there are not more than that?

A. You say since or including 1902?

Q. Since 1902.

A. Well, I know we have got twenty Atlantic types without counting them.

Q. When did you purchase those Atlantic types, in 1902?

A. No, they were purchased in 1904. In the year 1902 there were five ten wheel locomotives, in 1904 ten; in 1905, five; in 1906, five; in 1908, ten Pacifics and two switchers; in 1910, six; in 1911, twenty.

Q. That covers everything since 1902?

A. Since and including.

Q. Five in 1902?

A. Yes, sir.

Q. That makes sixty-three out of the total of ninety-six, doesn't it?

A. Yes, sir.

Q. And fifty-eight excluding the five purchased in 1902?

A. Yes, sir; that would be it.

Q. And these purchased from 1904 to last year, all are of the Atlantic type and Pacific type locomotives?

A. Yes, sir; twenty Atlantics and thirty-six Pacifics.

Q. And two switches?

A. Yes, sir.

Q. Now, you said something a while ago about your having adopted a different boiler from the old one, in the matter of maintaining the equipment up to the efficiency of your locomotives, during the time that you have been connected with the road who reports to you any defect in the locomotive, who inspects them?

A. Well, at different points, located at South Jacksonville, New Smyrna, Fort Pierce, Miami and Key West, I have a foreman on duty days and nights, and there is a locomotive report that the engine man

makes out, and the hostler take it from the engine man and if he sees any deficiency he adds to it, and if the machinist that inspects this locomotive finds anything he adds to it, and those reports are worked up, the engine man sends the original to me, or supposed to, the foreman at the terminal sends me in the duplicate, and he retains the triplicate; and that shows the names of the men that have worked on this at the different points.

Q. Now, then, I want to ask you this, you say this inspection is night and day?

A. It is night and day, yes, sir; if the engine comes in at night.

Q. How often, every day?

A. Every day, if the engine runs.

Q. Now, how soon after you get these reports do you find it necessary to repair or necessary to replace, are these locomotives sent to the shops to have that repair or replacement made?

A. They are not sent to the St. Augustine shop.

Q. Well, where are they sent?

A. They make their run at the end of the divisions, they are worked on and everything possible is done to catch up with that work, and the engine is sent out on its run next morning or the next night as the occasion may be.

Q. Then unless something more than this ordinary replacement it is immediately fixed?

A. It is immediately fixed, or as soon as it is possible to do so, we can't always do that.

Q. Taking the entire batch of locomotives as a whole, with the exception of those three in the shops for general repairs, is your motive power any less efficient to-day than it was the day it was purchased?

A. Not as far as hauling cars and loads are concerned; we can haul as much as we ever did.

Q. You say they don't look as well?

A. They are not as pretty.

(That's all.)

Cross-examination.

MR. NEEDHAM: Q. When were the remodeling of the fire boxes, changed from wood to coal?

A. The first engine was sent out in April, 1906.

Q. When were the others made?

A. There were one or two that year. And two or three the next year, I can't tell you exactly, but I remember one year I think we got out seven. These have been remodeled with our other shop work. I mean we were making slight repairs, running repairs, and heavy repairs, and we spliced in between.

Q. You know that reports are made to the Interstate Commerce Commission requiring repairs and other expenses in connection with locomotives?

A. Why, yes, sir; I know in a way, I think it is done with our comptroller, through him. I know I personally don't do that.

Q. Under the head of maintenance of equipment in each annual report, there is an item, steam locomotive repairs. Last year the report of this company shows under that item $188,511.74, who made that item, did you?

A. That was made through my office, yes, sir.

Q. The next item is steam locomotives renewals $1,556.99, did you make up that statement?

A. No, sir; that is made through the comptroller's office. These figures are furnished from my office to his office.

Q. The next item is the steam locomotive depreciation $47,469.20, who made up that item?

A. That comes from the comptroller's office.

Q. Who makes that up?

A. I think he makes that up.

Q. Do you have anything to do with that at all?

A. Not that I can remember.

Q. You don't know how that is arrived at?

A. I don't know, sir.

THE COURT: What is the total, Doctor, does it appear what the total value of the locomotives was last year?

MR. NEEDHAM: Oh, yes, the valuations appear under this. This, if your Honor please, is maintenance and repairs, chargeable to operating expenses, comes out of the annual operating expenses.

THE COURT: Is there any way of getting at the percentage allowed for depreciation each year?

MR. NEEDHAM: Oh, yes, the report shows the valuation of the equipment, and gives the valuation of the locomotives at that time, and it shows the amount that they charged to depreciation, which comes out of the operating expenses, your Honor understands.

THE COURT: Well now, does that exhibit allow upon a fixed basis?

MR. NEEDHAM: It is the report to the Interstate Commerce Commission.

THE COURT: At a fixed sum, or is it optional with the carrier?

MR. NEEDHAM: No, it is optional with the carrier as I understand it.

Q. I see that there is charged in this several items last year, $237,537.93, so far as you know those items are correct?

A. Why, I will have to refer you to the Comptroller.

Q. I say so far as you know, so far as you made them up or had anything to do with the making of those statements.

A. Yes, sir, so far as I know anything about it they are correct, but I am not prepared to say whether they are correct or not. That is another man's business, and I don't want to tell you something I don't know about.

Cross-examination.

MR. ESTERLINE: Q. Mr. Miller, taking the Atlantic type of locomotive, to which you have referred, that is a type of locomotive in general use throughout the United States by railroads, is it not?

A. Yes, sir; it is not quite as popular as it has

been, I think the Atlantic Coast Line has a lot of them. They are a locomotive that will stand no end of abuse.

Q. What I mean is this, there is nothing peculiar or extraordinary about their construction?

A. No, sir; they are the standard type of locomotive.

Q. And the same is true of the Pacific type locomotive?

A. Yes, sir.

Q. And they are in general use?

A. Yes, sir.

Q. And the prices which you paid are the ordinary prices for which they were purchased by railroads generally, I assume?

A. Why, I should say generally, our President had the placing of those orders.

Q. But I mean it is an ordinary transaction for an ordinary—

MR. ABRAMS: Nobody claims otherwise.

Q. Without any heavy price or any special price paid for the thing you were getting?

A. I don't think there is any special price paid, we put in extra good material. That is I specified that and notified them to put in extra good material. That paid more for it than one with cheaper material.

Q. Now, the change of light from oil to electric light, that was done generally by railroads?

A. Wherever the track is congested.

Q. Well, generally, you are familiar with railroad operation, are you not, in the United States and in the east?

A. Well, I know more about this line than I do anywhere else.

Q. You don't mean to say there is anything peculiar in the Florida East Coast Railway in changing from oil to electric lights?

A. No, sir.

(That's all.)

Re-direct examination.

MR. ABRAMS: Q. Mr. Miller, have you recently submitted the various types of your locomotives to any locomotive builder or expert in the construction of locomotives?

A. Why, I have not personally, I think our company has.

Q. Do you know when?

A. Well, recently.

Q. How recently, did you submit them yesterday or the day before?

A. Why, there is a gentleman here representing these builders.

Q. Well, when did you show him the locomotives?

A. Yesterday.

Q. When did you know he was coming?

A. Well, I didn't know it until the President called me up yesterday and said this gentleman was here and he wanted me to show him our locomotives.

Q. Did you select any special locomotive to show him?

A. I took him out to the engine house and showed him a type of each locomotive that was there, and since that time there was another one come in, that is of those three.

Q. What I mean is, you did not select any locomotive to show him?

A. No particular one, except that it was a type, and those happened to be on hand.

Thereupon the petitioner to further maintain the issues upon its part produced and caused to be sworn as a witness one Thomas W. Gentry, who testified as follows:

THOMAS W. GENTRY.

Direct examination.

MR. ABRAMS: Q. What is your name?

A. Thomas W. Gentry.

Q. Where do you reside, Mr. Gentry?

A. Richmond, Virginia.

Q. What is your business or occupation?

A. At present I am in the sales department of the American Locomotive Company.

Q. How long have you been engaged in that business?

A. With the Locomotive company in different capacities about eighteen years.

Q. What knowledge have you in regard to construction of locomotive engines?

A. Well, a fairly clear one, I have served apprenticeship and worked as machinist, had charge of the railways as a master mechanic, and assistant superintendent of motive power, and have run locomotives, and for the last eighteen years I have been closely associated with the building of them.

Q. Now, have you had submitted to you several classes of locomotives since your arrival here?

A. Yes, sir.

Q. When did you arrive here?

A. On Wednesday afternoon about four o'clock.

Q. When did you first see these locomotives?

A. Yesterday morning.

Q. State what you saw, the different types that you saw?

A. Well, I saw one of each type. I saw the eight wheel type, the Atlantic type, and Pacific type, ten wheel type, switcher. That constitutes all the classes that the Florida East Coast operates.

Q. How did you find them as to their condition and efficiency?

A. Well, sir, from the first class inspection that I could make I would consider their condition in first class order.

Q. I think it is five fifteen by twenty, I think they are called, did you see any of those?

A. The smallest engine that is operated is about seventeen by twenty-four.

THE COURT: Q. What do you mean by seventeen?

A. Why, that means the diameter, the stroke of the cylinder, the power is judged by the cylinder, the other parts are all proportionate. We start with the cylinder as a rule, from that we calculate its horse-power.

Q. Can you state if you know, what is the difference in price between the purchase of that small locomotive in 1888—

A. Some of them were purchased back about fifteen or sixteen years ago.

Q. And the present time?

A. Well, we were asked to state to the railway company what we would agree to—

Q. What you would build the same for?

A. That is what I am coming to, we were asked to state to them what we would replace those engines to-day that were built fifteen years ago, and we thought we could not undertake it for less than about a thousand dollars net more for us to get anything like the same profit out of it that we did at that time.

Q. As to the other class of locomotives, which have been later purchased, which you saw?

A. There are some engines that were purchased just a little more than a year ago.

Q. Have the prices of those gone down, that you know of?

A. No, sir; the prices at present are, if anything, are a little higher. Like everything else, the price of locomotives fluctuate with the demand, and with the cost of material and labor.

Q. Does as short time as a year make a difference in the price?

A. Frequently.

Q. You say you consider those are in good condition?

A. I consider them as good condition.

Q. Taking them as a whole, do you think they could be replaced for any less money than they originally cost?

A. I do not. If I am permitted to say without

your asking the question, I will say that when the engines were built fifteen years ago we had no rigid safety appliance laws, we had no laws that compelled us to put on appliances and things of that sort that we would be compelled to put on today by law, and little things as you mentioned a while ago, electric headlights, we can put on a first class oil headlight for twenty-five dollars, and it costs us two hundred and fifty dollars to put the other.

Q. Well, do you put on electric headlights with every locomotive that you build?

A. No, sir; some of those—some of the largest systems in this country have not adopted the electric headlight, and there are others that we have to put it on the locomotive engines because the State laws require it.

Q. Now, Mr. Gentry, if you are required by your specification or orders to put electric headlights on, you charge more for them, than if you put on the oil light?

A. We charge the cost of the light to us, and also for installing it.

Q. And that is an additional price that you get for the locomotive?

A. Certainly. All the engines that I looked at today are equipped with the electric headlights, automatic couplers and safety appliances.

Q. Now, fifteen or twenty years ago, was an engine required to be equipped with automatic couplers?

A. Not until after the Master Car Builders' Association agreed to make it compulsory that everybody should have some form of interchangeable coupler.

Q. Do you recall how long ago that was?

A. It has been in force—I forget exactly when Congress enacted the law to make it compulsory, but it had been carried by better railroads long before that, and it was deemed unjust of course to these people who had it on their equipment, and those that stayed out were afterwards compelled to do it.

Q. You can't recall the number of years?

A. Why, it has been about eighteen years. I stopped active railroad services about eighteen years ago, and we still had a limited time for which we were compelled to put them on.

Q. You stopped eighteen years ago, and the time had not yet expired for making it compulsory?

A. No, sir.

Q. Now, Mr. Gentry, to what extent has the increased cost of labor, or decreased hours of labor, or increased cost of material, tended to increase the price of these locomotives over what they were fifteen or twenty years ago?

A. We are paying at the present time for labor on an average nearly forty per cent more than we paid twenty years ago or even fifteen years ago, and most of the materials that enter into the construction of locomotives have increased.

Q. From your inspection of these locomotives, what would you say as to their present capacity for standing the same pressure, hauling the same weight they were constructed to stand and to haul when built?

A. The first question I asked Mr. Miller was whether he had reduced the pressure of his boilers than what they originally carried. He told me he had not, he has no means by which he could decrease the weight, so if he can carry the same pressure and keep his pistons and his valves and everything about the engine so there is no loss of horsepower, there is no reason why those engines should not haul as many tons today as when they were built.

Q. Now take an engine purchased in 1888, is there anything to prevent the owner of it from keeping it up year after year to the maximum efficiency and capacity?

A. No, if he renews the fire box, and if he keeps and maintains them in the state of repair they were when they were built, which he assured me he does, and from my inspection I have every reason to believe that it is so, I can't see but what it is just as

safe with those engines as with our present more safety valves and safety appliances; he seems to have done almost everything to them, and that together with the fact that the engines don't get off the road, they don't run promiscuously over another road, and are entirely under his supervision, as I understand it.

MR. ABRAMS: I wish you would agree to that, that our locomotives never leave the State, and never leave the road, you will agree to that?

MR. NEEDHAM: Yes, sir.

Cross-examination.

MR. ESTERLINE: Q. Mr. Gentry, you speak about the cost of reproducing a locomotive of the type of 1888, the facilities and the plant with which you constructed those locomotives has gone out of use very much like the locomotive, haven't they?

A. We have improved facilities for constructing our locomotives.

Q. I mean the type of 1888?

A. Oh, yes, it has grown obsolete on such roads as the Pennsylvania, and the Harriman Lines and the Chesapeake and Ohio, and all roads whose business has warranted it, they would not be of course profitable. But then we have engines for the Chesapeake and Ohio, when I first went with the Richmond Company, that are only eighty tons in our buildings are two hundred tons, and we have some in the shops that are four hundred tons. Of course, that is brought about by the absolute need of the service.

Q. What I mean is, if you were asked to construct or reproduce a locomotive of the 1888 type, you would have some difficulty about it, wouldn't you in the—

A. No, we have a most correct method of keeping every drawing and those drawings are filed away in fireproof safes, and we have all the more improved

patterns still preserved, among all the patterns of buildings at our works.

Q. You could produce those engines in your works?

A. We could produce those engines in our work today, yes, sir.

Q. You don't reproduce any of those engines, do you?

A. Very rarely, except for some little roads down in this country.

Q. You don't contemplate very much business for those?

A. We are building them for the same people who have forty-five ton rails they had twenty years ago.

Q. Now, is it not a fact that locomotives of that type you have spoken of, of the Pennsylvania and the Harriman lines are coming to disappear from off the roads?

A. Why, they haven't disappeared altogether.

Q. Their type is going fast?

A. Oh, a well managed road will put those engines on a branch line, they have many branch lines and many small lines, and they can take these engines, they don't throw them away, they don't sell them for junk, only an engine that has probably met with some accident. You can take a road like the Southern Railway, they have engines running in service that I worked on as a young man thirty years ago.

Q. Now, Mr. Gentry, is it not true, that after an engine goes on the road and runs for a while and is repaired, we will say, and then runs again, after it is repaired two or three times, it goes off the main line on the side because it is not able to—

A. That is because it is too light.

Q. And it becomes a second-hand engine?

A. Well, no, sir; I don't consider it so, it is because of the increasing business on the main line, and the engine is not heavy enough.

Q. Now as the engine becomes older and more out

of style, it is put on a different class of work, like any other machine or anything else of that kind?

A. Yes.

Q. And there is nothing about locomotives that is peculiar in that regard?

A. No, sir.

Q. Mr. Gentry, there is such a thing as a locomotive becoming worthless, becoming junk?

A. Certainly, if neglected.

Q. That is not an extraordinary thing at all?

A. No, sir; the railroad yards are full of them. But it all depends on the care and attention that an engine receives from the time it is put in service.

Re-direct examination.

MR. ABRAMS: Q. Mr. Gentry, in regard to heavier locomotives on main lines, isn't that due to the heavier trains that have to be put on the main lines?

A. Yes, sir.

Q. And the running the lighter locomotives on the branches, isn't that due to the fact that the roads are necessarily lighter than on the main line?

A. Of course.

Q. You say you have seen these largest engines of the company?

A. Yes, sir.

Q. How do they compare with these big locomotives you say the Pennsylvania Railroad have?

A. Why, the engines are very similar of course with the exception of appliances what we term "fads."

Q. What I mean is in their power?

A. Oh, there are more power in the engines on the Pennsylvania system than you would have any need on the Florida East Coast.

Q. Now, would you expect these engines, the new engines of the Florida East Coast, to do the same amount of hauling that those enormous things on the Pennsylvania Railroad hauls?

A. Oh, no, sir; you couldn't consider it.
Q. They couldn't haul it?
A. Of course not.

Cross-examination.

MR. BOGGS: Q. Mr. Gentry, a locomotive wears out after a while, even with the best of care, doesn't it?

A. Oh, there would be an end to it, yes, sir. There is only one part about a locomotive that is vital, that is apt to wear out, that is I mean, that can't be replaced readily and reasonably cheaply, and of course that is the boiler, but there is no reason on earth why we couldn't cut off that part of the boiler and replace it, which is done here, I saw in walking through the yard, several new fire boxes, which I suppose are to replace the old ones. As long as you can keep the boiler safe so it will pass the inspection for explosions, and at stated periods Mr. Miller has the records of that, he has remedied the parts that are most easily attacked by service. The boiler does not deteriorate anything like the fire box or tubes, they are the parts that give out, and they are so constructed that they can be reasonably replaced at a reasonable cost.

(That's all.)
(Witness excused.)

Thereupon the petitioner to further maintain the issues upon its part produced and caused to be sworn as a witness one L. W. Singleton, who testified as follows:

L. W. SINGLETON.

Direct examination.

MR. ABRAMS: Q. What is your name?
A. L. W. Singleton.

Q. Where do you live?

A. St. Augustine, Florida.

Q. What is your business or occupation?

A. Master car builder of the Florida East Coast Railway.

Q. What do your duties include?

A. Why, the taking care of repairs and keeping in repairs of the freight and passenger equipment.

Q. How long have you been engaged in that work?

A. Since October 6th, 1892, about seventeen and a half years, not in this position. I have been in this position since 1900, I have been with the company that long, since 1900 as master car builder.

Q. What is the condition of your cars and equipment and all, outside of locomotives at this time?

A. Why, we consider our equipment in very good shape.

Q. Now, when a car is first purchased and put into service, what is your method of keeping it up in first class condition, state what you have done?

A. Well, when the car is first put in service, the first thing we have actually to do to it is to keep it well covered with paint to preserve the wood.

Q. How often do you inspect the cars?

A. Oh, well, we have twelve inspection places on the road, every time it passes those inspection places it is inspected.

Q. Every car?

A. Every car, passenger and freight.

Q. Does that inspection take place at stated hours day or night?

A. No, sir; as they come through, the regular train.

Q. Now, when defects are discovered, what do you do?

A. Make repairs.

Q. How do you know, how do you find out?

A. Well, we have a chief inspector at each station, and each station is a repair station with us, it is a little bit different with other roads, all the smaller

repairs are made at these repair stations, the heavy repairs are sent to the St. Augustine shops.

Q. Have you got with you a list of your equipment of cars, both freight and passenger?

A. Why, I haven't got the freight, I have got the passenger; it will be here in a few minutes.

Q. Now, in regard to your passenger equipment, state to the court about when the different cars were purchased, if you have got that, and what you have done to them to keep them up?

A. Here is a report of last June, the 30th, it is our fiscal year, of the equipment we have on hand.

Q. You have added some new ones since?

A. Yes, sir.

Q. Go ahead?

A. Well, June 30, 1911, we had thirty-seven first class coaches.

Q. That was passenger equipment?

A. Yes, sir. Now, we have added five steel cars to it in 1812. We have twenty-one combination coaches, we have added two to it in 1912, steel. We had thirty-six baggage, express and postal cars, and have added seven steel in 1912. We had two observation cars.

Q. What are those observation cars?

A. These observation cars were parlor cars originally purchased with the road. They were afterwards converted, and we sold all parlor cars except four to the Pullman Company. We first had orders to convert one hundred and four, one hundred and two and one hundred and three into day coaches, but it was afterwards decided to convert the two small cars of the two first named of the observation cars, to be used on the Key West extension. The other two cars which are parlor cars are now coaches No. 83 and 82. Now, I can give you in detail what we had of freight, but I can't give the cost in any of the present time but a year ago. I have got a list of freight.

Q. Well?

A. In June, 1911, we had five hundred and eighty-two box cars in use, four hundred and thirty-six flat cars of that number two, No. 726 and 503 have been destroyed. We have added in 1912 one hundred and fifty all steel flat cars; stock cars, we have six. In June we had forty-eight coal cars, in 1912 we added fifty all steel coal cars; we have seven oil or tank cars. Now we have two officers or pay cars; one hundred Rodger ballast cars, that is in working equipment now, you see, we have seven derrick cars, forty caboose cars, one hundred and thirty-nine work cars. That is the total equipment.

Q. Now, I want you to state how frequently you add necessary repairs, for instance, if one of your inspectors reports anything the matter with a car, what is your practice as to promptness in repairing that defect?

A. Well, Major, I think we have a pretty good system, because I have had to "fire" about half a dozen men before I got the system as to reporting promptly, they would not do it. Now there is a car leaves Miami, say it comes to Palm Beach, there is some defect, no car is ever injured standing still, it is while it is in transit, but it is detected at Palm Beach. Immediately our chief inspector wires me at St. Augustine, the defects on that car, and I immediately wire destination, wherever it is, and the information is taken at once on the arrival of the car—

Q. The car is taken out of the train and then repaired?

A. Yes, sir; that is where a car is safe to run, perfectly safe to run to destination all right, but at destination it must be repaired or cut out of the train. Now, this report follows right on up.

Q. The cars of this road don't leave the State?

A. No, sir; we don't interchange any freight or passenger.

Q. These cars are always under your immediate supervision?

A. Yes, sir.

Q. To what extent do they ever leave your road?

A. Only to the extent of just doing a little business around Jacksonville around in the terminal stations.

Q. Just transferring?

A. Yes, sir.

Q. And then it is brought back home to your road?

A. Yes, sir; not allowed to get off the line you might say at all except in Jacksonville.

Q. Now, state in a general way the extent to which you have had to repair these cars, and the extent of efficiency that you keep them up to?

A. Well, I will start with the passenger cars then. So far as that is concerned, as stated, when the parlor car is first brought new from the shop it hadn't ought to have any repairs to amount to anything for a year or two years, but we try as far as possible about every ten or eleven months to bring them in and tighten up all bolts and repaint, and then as anything happens to it it is taken care of promptly, but once each year they are all brought in and everything, every bolt is looked over, every bar, everything.

Q. In regard to your trucks?

A. Everything is looked over, it is generally overhauled once each year, whether it needs it or not.

Q. Have you had to make any change or betterments in any of those cars?

A. Oh, yes, we have converted quite a number of these fifty-foot series into colored cars, partition in the center, and had a lavatory put in, and to the sixty feet coaches we have added five smoking rooms.

Q. In regard to the vestibule cars did you have to do anything to them?

A. Yes, we have vestibules, quite a number that consisted of mail cars, some baggage and coaches.

Q. Now, what does it cost you to vestibule a car, can you state approximately?

A. Well, it costs about nine hundred dollars.

Q. To change it?

A. To change everything, yes, sir; about approximately nine hundred dollars.

Q. State if you can from that, if you have it, what other change and the expense you have been put to.

A. Well, Major, I haven't got it in detail, everything, just every car you know.

Q. Well, that is not necessary, but state generally so that the court may understand the extent of your repairs?

A. Well, we have changed all of our first equipment that came, it came first light, it is what we call the plain Janney coupler, and as far as possible we are changing to heavy draft gear, making them stronger, and we are even going further as the engines grow larger we are putting in the construction in many instances we are putting in heavier sills, eight by ten running the entire length of the car, and instead of two four and a half by eight or nine it now measures nineteen inches through one sill, one solid timber. That is for safety and strength.

Q. Now, could you purchase those cars with all this additional appliance and stringers and the like, for the same price that you bought the original cars that you have thus altered?

A. No, indeed.

Q. About how many of these cars did you change in that way to meet the increasing heavier business of the road, could you state approximately?

A. I should say about twenty-five, or one fourth.

Q. Out of how many?

A. Well, our equipment now stands one hundred and ten, but there are a great many now of the most modern cars; it is the light equipment that I am speaking of changing.

Q. You have changed that light equipment so as to meet the heavier traffic?

A. Yes, sir.

Q. Now about what did it average you apiece to

make that change, just state approximately, if you can?

A. Well, about two hundred and fifteen dollars per car.

Q. Now, in the matter of your passenger equipment, do you inspect them for decay in timber or material?

A. That is what we inspect the cars for; a car comes in and it apparently looks all right, we take off those covering plates and examine to see if the sills are in good condition.

Q. How often do you do that?

A. That is done each year and sometimes a little oftener than a year.

Q. If you find a decayed sill or defect in the sill or defect in any of the woodwork, what do you do?

A. It depends on the nature of the defect; for instance sometimes we splice a sill and sometimes it goes a little too far and we take the entire timber out.

Q. Do you replace it with new ones?

A. We replace it with new, yes, sir.

Q. And it is the same way with all woodworks?

A. All woodwork, yes sir.

Q. How soon after you discover that decay or defect do you make the repairs on it?

A. Well, those defects are discovered after the car is brought in, and they repair such defects then. While the car is running the main inspection is in the trucks or running gear, draft gear, etc., but a car can't decay to amount to anything in one year's time, so that it is thoroughly overhauled once a year.

Q. How does your oldest equipment compare today in efficiency with what it was at the time you first purchased it?

A. Well, now, I tell you, Major, taking everything into consideration, take the improvements that we have put on and the condition they have been kept in, I call them good.

Q. Call them what?

A. Call them O. K.

Q. That may be, but I asked you how do they compare, do you consider them just as effective, as good as when they were first bought?

A. Yes, of course, there may be some depreciation, you couldn't call anything just as good after so many years, although kept up perfectly.

Q. Could you give me the dates of the different purchases of your cars?

A. Yes, sir.

MR. NEEDHAM: Your Honor, I can't see the relevancy of all this.

THE COURT: I should think you could curtail a great deal of this.

MR. NEEDHAM: If it will save time, it may be admitted that they keep their equipment in good condition. If he wants to show when it was purchased according to this list here we will admit it to save time.

Q. Have you got the dates of the purchases?

A. Yes, sir. (Handing counsel paper.)

MR. ABRAMS: I offer that in evidence as the dates of the purchase of our cars, and the original cost of them.

MR. ABRAMS: Now, with regard to the freight equipment, do you make the same agreement?

MR. NEEDHAM: You may put in the list as it is.

MR. ABRAMS: And the agreement as to the general good condition.

MR. NEEDHAM: Oh, yes, what I said with reference to equipment applies to all the equipment, your Honor. I don't raise any issue that they don't keep the equipment up, they do keep it in excellent condition.

MR. ABRAMS: (Dictating.) It is agreed by counsel for the respondents and intervenors that the Florida East Coast Railway keeps and maintains its passenger and freight equipment in excellent condition.

Q. Is this a list of the freight cars?

A. Yes, sir.

Q. This is a true description of the cars and the date of the purchase of the cars and the cost?

A. Yes, sir.

MR. ABRAMS: I offer that in evidence.

Q. I notice in some of these items I see 1912, I presume that means in the fiscal year ending June 30, 1912?

A. No, sir; we have added two steel—

Q. That would come within the fiscal year ending June 30, 1912, that was equipment that was vouchered for in January, was it not?

A. No, sir.

Q. I think you are mistaken as to that, because we have not bought any equipment at all in 1912, it was bought last year, and delivered in January.

A. This was delivered in January, 1912.

Cross-examination.

MR. NEEDHAM: Q. You understand the system of bookkeeping in keeping accounts of the equipment and the maintenance of equipment?

A. I do of keeping the records of the equipment, but not in the handling of the bookkeeping.

Q. The original cost of cars is charged to equipment?

A. Charged to equipment, yes, sir.

Q. Is a capital investment?

A. Yes, sir; the maintenance of repairs are charged to maintenance account, which comes out of the operating expenses.

Q. You understand that?

A. Yes, sir; I understand that.

Q. I notice in the report to the Interstate Commerce Commission for the year ending June 30, 1911, the last report made, that the repairs to passenger train cars was $101,789.78, was that item made up by you?

A. No, sir.

Q. You had nothing to do with making that item?
A. No, sir.
Q. That was made in the accounting department?
A. Yes, sir.
Q. Passenger train cars renewals $641,000.00, do you know what that item means, do you know how it is made up?
A. Yes, we make our amounts we put in renewals for material and labor, etc., which is also handled by the accounting department.
Q. You didn't make that account up?
A. No, sir; we didn't make that up.
Q. Passenger train cars depreciation $2,259.16, you have anything to do with that item?
A. No, sir.
Q. You don't know how that is made up?
A. No, sir.
Q. How it is arrived at?
A. No, sir.
Q. Or what percentage is used?
A. No, sir.
Q. Is that also true of the item freight train cars repairs $130,596.05, renewals freight cars $1,938.30, depreciation $32,741.61?
A. Yes, sir.
Q. Did you have anything to do with any one of those items?
A. No, sir.
Q. They did not pass through your hands?
A. No, sir.
Q. You said that this equipment belonging to the road did not go out of the State, if I remember?
A. Yes, sir.
Q. The interstate traffic in car lots is in cars that is furnished from other railroad companies, or cars that have been rented?
A. Yes, that is true. We use our cars principally and almost wholly for local work. We do take many tons to Jacksonville and South Jacksonville and transfer into foreign cars, for all interstate work the greatest portion of it is by foreign cars.

Q. Well, you modify your statement now that any of your cars run through, pass over other lines?

A. I could not do so out of Jacksonville. As I say, it never passes out of Jacksonville.

Q. And through freight is transferred from your cars to the cars of other companies at Jacksonville?

A. Yes, sir.

Q. Well, these flat cars that are used and owned as a part of the freight equipment for service upon the line of the road, within the State, what are they principally used for?

A. Well, for hauling coal, some equipped with sideboards to haul coal, but principally lumber and heavy materials, the open flats.

Q. Principally lumber and heavy materials?

A. Yes, sir.

Q. Materials used by the company largely in its construction work?

A. No, sir; they have special cars of their own. It is not working equipment.

Q. Then the freight cars are not used for carrying company material?

A. At times they are, yes. That is, they have their own cars working equipment for hauling material from one place to another; they have regular trains you might say carry their timber right along with them.

Q. I don't see in that list any flat cars for carrying materials, such as lumber and timber?

A. That is miscellaneous, that one hundred and thirty-nine cars includes camp cars, flat cars, tool cars and everything used in work equipment.

Q. And for carrying material?

A. Everything, sand and everything else.

Q. But to some extent this equipment is used in carrying company material?

A. Yes, sir.

Re-direct examination.

MR. ABRAMS: Q. What is meant in this work equipment by "Ballast cars"?

A. That is cars for hauling ballast to ballast the road bed.

Q. Can they be used for hauling ties or anything of the kind?

A. Yes, sir.

Q. What is meant by one hundred and seventeen camp cars?

A. That is for the men to live in, that is for the work train to live in.

Q. What do they consist of, those 117 cars?

A. They consist of box cars with doors and windows cut into them; these camp cars and work cars including cars for sleeping.

(That's all.)

(Witness excused.)

Thereupon at nine o'clock and forty-five minutes A. M. the hearing was resumed pursuant to adjournment.

Thereupon the witness, Mr. Chambers, was recalled, and having been previously sworn, testified as follows:

MR. CHAMBERS.

Cross-examination.

MR. NEEDHAM: Q. Mr. Chambers, have you the original letter that was sent February 5, 1912, by the Chief Examiner of Accounts, to which your letter is a reply?

A. No, sir; I haven't got the letter with me.

MR. NEEDHAM: This is a carbon copy of the original letter, and I think perhaps in order to un-

derstand the reply which has been introduced perhaps this should be introduced.

MR. ABRAMS: I have no objection.

MR. NEEDHAM: Then I will introduce this in connection with Mr. Chambers' testimony.

Q. Did you make a comparison of that statement that I gave you?

A. Oh, yes. You mean these earnings?

Q. Yes, for the four months.

A. Yes, it is all right, with a small correction there, it does not affect the general result any.

Q. With these corrections which you have made at the bottom this statement is correct?

A. Yes, sir.

MR. NEEDHAM: Then I will offer this statement as an exhibit to Mr. Chambers' testimony.

Q. Now, did you find the letter from New York with reference to those credits? (Handing counsel letter.)

MR. NEEDHAM: Now, I would like to introduce this. Perhaps if you would like to keep the original a copy can be made and substituted.

Q. Now did you find any other letters?

A. Those other entries I find were made by Mr. Parrott, and the entry so states. That is profit and loss items.

Q. That applies to the entries in 1903?

A. Not altogether.

Q. Not included in this statement?

A. Those two entries that apply to profit and loss.

Q. Those were made by direction of Mr. Parrott?

A. Yes, sir.

Q. And so appear upon your books?

A. Yes, sir.

Q. Now, have you the details with reference to these exhibits which were introduced with reference to the freight and passenger traffic for 1911 and 1912?

A. I have not, sir.

Q. Can you state how these accounts are made up?

A. I think the exhibit states there, don't it, at the head.

Q. The first one reads "Estimated freight and passenger earnings from Key West extension, from Miami, south, for eight months, February 28th to February 29th, 1912, based on proceeds of Key West extension mileage and total mileage operated," does that mean that you took the entire earnings of the road and distributed it upon the mileage south of Miami?

A. I think that is the way my clerks did it, yes.

Q. Without reference to the amount of traffic that actually passed over that part of the line?

A. Yes. I don't understand that at all, I asked for that information and they gave it.

Q. Then this statement does not show or purport to show as you now understand the amount of traffic that actually passed over that part of the line?

A. I am getting up such a statement though which I will have in a few days that will be actually correct, that is, as near correct as I can get.

Q. Then this statement, I don't know what exhibit this is, is of no value then as showing the traffic that passed over that line?

A. Not at all.

Q. With reference to this exhibit No. 4 how was this exhibit made up, on what basis?

A. I think that is based on the actual freight over each of these divisions, based on the average train per mile for the route of the entire road. That is my understanding of it now. I think that was the way it was gotten up.

Q. Does that apply to the Key West extension account?

A. I think so. No, that is actually the company's business, that was the actual amounts charged to the Key West extension.

Q. For the company's business?

A. For the company's material.

Q. I refer not to the last item, but to the next to the last item?

A. I am not prepared to say exactly how that was made up, without consulting the man that made it up in my office. I simply gave instructions to have it made up, and I presumed it was all right.

Q. Well, can you state whether or not this entry Key West extension, next to the last line, shows the actual traffic over that extension?

A. I think it does, based as I say on the rate per mile for the entire road.

Q. That is taking the actual traffic and charging it up at the average?

A. Taking the tonnage and charging it up the average rate per mile.

Q. Was that figured on the actual mileage of the freight itself, or was the entire mileage of the road taken?

A. Well, I think it was on the actual mileage, but I would not state positively to that, without seeing how it was actually made up. I have not seen that statement, it was made up in a hurry and sent to the Major, and I did not verify it.

Q. Well, will you later do that, Mr. Chambers, I think it will be sufficient, I think it will be sufficient if you will just in a letter or memorandum—

A. You want to know how these were arrived at?

Q. Yes, I want to know whether or not you figured in the way you state, whether that is the actual mileage on freight carried or whether you figured the amount of the freight from originating point or destination to the Key West extension, and figured it for the entire mileage?

A. You wish to know that for the Key West extension or entirely through?

Q. Just for the Key West extension, but I would like to how how it is figured.

A. Yes, sir.

Q. Did you make up the statement, Exhibit No. 11, attached to the petition?

A. Yes, I think these were gotten up in my office.

Q. In this exhibit I notice the earnings year end-

ing June 30th, 1910, Homestead to Knights Key, $524,969.30, and another earnings year ending June 30, 1911, Homestead to Knights Key, $595,277.80, how were those figures arrived at?

A. Well, my impression is that they were arrived at the actual earnings of the divisions, as near as we could get them, based on the proportion of the through rate.

Q. I notice in your annual report, June 30, 1911, the operating revenues per mile of road are put down at $7,198.84 as an average; is it not a fact that you took the average mileage, and the mileage operated upon the extension and extended it?

A. That is figured on the mileage shown in the report.

Q. Figures out about the same, doesn't it?

A. It is figured on the mileage shown in the report, isn't it?

Q. I asked you how it was figured?

A. Well, it is mileage in the report.

Q. Then these figures which you give in this exhibit are made up by taking the mileage on the extension and computing it at the average mileage shown in that report?

A. I couldn't tell you off hand how this was made up.

Q. But it figures about the same?

A. I haven't the figures.

Q. Well, will you look at that, and see how those are made up?

A. Yes, sir.

Q. That would not be a true statement of the actual earnings upon the extension, but the average of the entire road, and figuring it upon the mileage of the extension?

A. No, that would not be the actual earnings of the extension.

Q. Well, that is what it figures out in this exhibit?

A. I have not gone into that.

Q. Will you look at that and also include that in your statement?

A. Let me have reference to that statement you have there.

Q. At the time this statement was made up, Exhibits Nos. 10 and 11, you were operating to Knights Key, were you not?

A. Yes, sir.

Q. What is the mileage from Homestead to Knights Key?

A. I don't remember the actual mileage.

MR. ABRAMS: You have that in the annual report.

A. Eighty-three miles, Marathon is abandoned now.

Q. Will you just compute, please, taking that average revenues for 1911, $7,169.84, and multiply it by the mileage on the Key West extension—

MR. ABRAMS: I wish to offer an objection to that. If you are to compute any particular part of the line as to its earnings, if the Court please, it would be more easy to make an excess overvaluation or excess undervaluation—

MR. NEEDHAM: I am not offering it as correct.

MR. ABRAMS: I wish to enter an objection to any such computation on the ground it is manifestly irrelevant.

A. That would be $595,096.72.

Re-direct examination.

MR. ABRAMS: Mr. Chambers, an exhibit has been filed which shows the comparative statement of operating revenues for three months beginning July 1st to October 31st of each fiscal year, 1908, 1909, 1910, 1911; now this does not contain the operating expenses of the road?

A. No, that is revenue only.

Q. Have you made a summary of the operating expenses of those years? See if those are correct. (Handing witness paper.)

A. This shows the earnings and expenses.

MR. ABRAMS: Now I wish to put that in evidence.

Q. What do these figures indicate?

A. That shows excess of expenses over earnings.

Q. That is for the fiscal year?

A. No, sir; that is for six months.

Q. But that is within the fiscal year, ending June 30, 1909?

A. 1909, yes, sir.

Q. Then for those three months that year those three months show a loss of $112,177.60?

A. Yes, four months I think it is.

Q. Now, the next fiscal year shows a profit of $63,081?

A. Yes.

Q. The next fiscal year, ending June 30, 1911, would show a profit of $83,804.40. Now, for the present fiscal year, July 1st to October 31, 1911, shows a reduced profit to $80,755, notwithstanding the increase of business. Now, if I understand correctly, while these figures are from July to October 31st, during what is termed the dull months of the year, does not a large amount of this money represent money paid into the company from business that had been actually done prior to July first?

A. I don't understand it.

MR. NEEDHAM: Let me ask him, this corresponds with your reports to the Interstate Commerce Commission?

A. Yes, sir.

MR. NEEDHAM: Subject to that correction, I have no objection to this going in.

Q. That represents, you say, earnings?

A. It represents earnings, not money received. We may not have received money for months afterwards, it is earnings for the operation of the—

Q. Then for those three months, July to October, 1908, which is within the fiscal year ending June 30, 1909, the road lost $112,177.60?

A. Yes.

Q. You say you are preparing an exact account of the extension business?

A. Yes, for that period.

Q. Now, I want to understand in regard to this when you say extension business, you mean all the freight and passenger business that went over the main line and the extension, you don't mean to imply that this was the business just done between Miami and Knights Key, do you? In other words, where you say passenger business, that includes what the passengers had to pay—that should show what the line earned from Miami to Key West, that went to and from?

A. Just over that portion of the road.

MR. NEEDHAM: You used that phrase on your books as representing the extension from Homestead south?

A. Yes.

MR. NEEDHAM: Now if you are using it in your testimony in a different sense we ought to know it.

MR. ABRAMS: Well, when we started from Miami the objective point was Key West.

MR. NEEDHAM: I don't care about that I just want to know how you are using that phrase.

A. The title on my books is Homestead extension, Key West extension from Homestead, that is the title on the books.

MR. NEEDHAM: Yes, there is no question about that, you have testified to that several times. Now, if you use that phrase on your books, Key West extension, in a different sense in this evidence than used on your books, we would like to know it.

A. The books show from Homestead south, but when we talk of the earnings of the extension we figure on Miami.

MR. NEEDHAM: Then this account in this statement is figured from Miami?

A. No, I have gotten up statements from Homestead, and I have gotten up statements from Miami too. I think on this exhibit it is from Homestead.

MR. ABRAMS: Now, in figuring here, what I want the court to understand, you don't pretend that the

local business between Homestead and Key West is represented by these figures do you, but it covers everything, as stated on the top here, accruing to the main line?

A. Oh, sure, everything that goes over the extension.

Q. From the main line?

A. From the main line and to the main line.

Q. Coming back to this exhibit put in evidence by the Doctor, being a carbon copy of letter addressed by the Chief Examiner of Accounts of the Interstate Commerce Commission, these entries were made by you, were simply as you were instructed to make?

A. Yes, all made under instructions.

Q. You have no personal knowledge as to the facts involved in these items?

A. Some of them I have not and some I have.

Q. Take for instance this account of the St. J. & H. Railroad Company, you know nothing personally as to those accounts, do you?

A. Yes, I know that that is the amount that was charged to the main line when they were consolidated, I know that.

(That's all.)

(Witness excused.

Thereupon the witness Mr. Miller was recalled, and having been previously sworn, testified as follows:

MR. MILLER.

Direct examination.

MR. ABRAMS: Q. Mr. Miller, you wanted to make some correction in your testimony you stated to me, that might be misleading, what was that, Mr. Miller?

A. When the question was asked me yesterday, what a replacement was, I said the first thing that

came into my mind, not thinking or knowing what the other questions were to follow. For instance, a car wheel is a replacement, and what properly chargeable to replacement and to repairs, I want to explain that a replacement, in the sense that was asked me, would be a replacement of the whole or part of it. He asked me what those figures were, what that account was made up from. I couldn't tell you what the particular item was. I do know that we buy a lot of fixtures—I just want to get myself straight.

THE COURT: For instance, if you buy a piece of boiler iron that goes into your boiler repairs?

A. Yes, sir; that is repairs, but if we replace or renew that entire locomotive, wipe it off the list and buy another one, and I was afraid my answer might be misleading. That is all I wish to say.

Thereupon the hearing was adjourned to be resumed in Washington, D. C., on Monday, March 25th, 1912.

State of Florida, County of Duval.

Before me a notary public, personally appeared Raleigh C. Dowling, who being duly sworn, says that he is the stenographer who took the testimony in the foregoing hearings; and that the foregoing pages constitute a true and correct transcript of the testimony so taken by him.

RALEIGH C. DOWLING.

Sworn to and subscribed before me this 1st day of April, 1912.

(Seal.) BEN F. CONE,
Notary Public, State of Florida at Large.

IN THE

UNITED STATES COMMERCE COURT.

FLORIDA EAST COAST RAILWAY COMPANY, A CORPORATION, *Petitioner,*

vs.

THE UNITED STATES, *Respondent,*
INTERSTATE COMMERCE COMMISSION, *Intervener.*

Washington, D. C., Monday, March 25, 1912, 10.30 o'clock A. M.

Before Judge William H. Hunt.

Appearances:
Messrs. Alex. St. Clair-Abrams and Fred'k C. Bryan, for the petitioners;
Messrs. Blackburn Esterline, for the United States, and
Charles W. Needham, for the Interstate Commerce Commission.

PROCEEDINGS.

W. H. CHAMBERS,

a witness heretofore sworn, resumed the stand, and testified as follows:

Direct examination.

MR. ST. CLAIR-ABRAMS: You have given a statement which was put in at St. Augustine, for the earnings, operating expenses, interest and so forth, for a period of four months.
A. Yes.

Q. Covering several years. I now ask you to state to the Court the same thing for eight months, except as to 1912, which would be for seven months. I will state to the Court I understood this morning that Mr. Needham had asked for it up to February 29, which we did not have, but which we will have to-morrow, so as to make complete the eight months.

A. This is a statement of earnings, operating expenses, taxes, interest and other charges.

Q. Now, Mr. Chambers, I notice here certain red marks, by "Interest on funded debt"; what does that mean?

A. That refers to the note down below.

Q. That is first mortgage bonds in existence in 1909?

A. Yes, at that time.

Q. I find under 1910, a red circle, with a line through it.

A. That refers to a note down here.

Q. Existing mortgages.

A. First mortgage bonds.

Q. What interest does that $300,000 refer to?

A. That is interest on the first mortgage bonds.

Q. Does it include any interest on present second-mortgage bonds?

A. No.

Q. Does the table show, for the eight months of 1909, a deficit or a surplus?

A. A deficit.

Q. Do the eight months for 1910 show a deficit or a surplus?

A. A surplus.

Q. Is that on account of the second mortgage bonds?

A. Yes.

Q. Let us take 1911, the eight months in that year; does it include interest on the second mortgage bonds?

A. No, it does not.

Q. What does that show, a deficit or a surplus?

A. It shows a surplus.

Q. Take the seven months in 1912, up to January 31. Does that include interest on the second mortgage bonds?

A. It does not.

Q. Does it show a deficit or a surplus?

A. It shows a deficit.

Q. Where do you get those from?

A. From my books.

Q. From these figures can you show what the monthly expenses of the road were, for the eight months ending February 28th, 1911, and the monthly expenses for the seven months.

A. The expenses for 1911 were $1,606,000.

Q. Divide that by eight, and state what the monthly expenses were.

A. It is $200,000 a month, approximately. Do you want the exact figures?

Q. You can easily figure it out.

A. $200,778.29.

Q. What is it for the seven months ending January 31, 1912? What are the monthly expenses?

A. $231,988.30.

Q. When will you have the earnings and expenses for the month of February?

A. In two or three days probably.

Q. Have you had any estimates made of those yet?

A. No; simply estimates of the earnings, not of the expenses.

Q. Can you state approximately if during February there was any increase in the passenger business?

A. I have not those figures with me.

Q. You could not.

A. No; but I know there is an increase in the passenger business.

Q. Is there an increase in freight?

A. I do not think so. I think there was a loss in freight.

Q. I offer this statement in evidence.

(The statement referred to, consisting of two sheets, thus offered in evidence, was marked "Chambers Exhibit No. 1," and is forwarded herewith.)

MR. ESTERLINE: I assume it is understood the general objection made to the taking of this testimony continues through the taking of the testimony.

JUDGE HUNT: Yes.

MR. ST. CLAIR-ABRAMS: (Producing a paper and exhibiting it to witness): Is that the only copy you have?

A. Yes, sir.

MR. NEEDHAM: (after examination): This seems to be for March, 1912.

A. 1911 and 1912, comparative.

MR. NEEDHAM: And this is estimated?

A. That is estimated, yes.

MR. NEEDHAM: Your Honor, I do not see that that is a proper exhibit to go in. This bill was filed along in last year. We agreed that the statements should go up to the time of the end of any full month, where we could get the absolute facts, but to take a partial month of March, for instance and estimate it, seems to me could be of very little value.

JUDGE HUNT: Not very much, I should think.

MR. ST. CLAIR-ABRAMS: I will show you the value of it. We allege in the petition the fact in regard to vegetables and citrus fruits, the fluctuations, for the current year, and we file in the exhibits a table showing complete fluctuations. Now, we find here, a large decrease of $66,000 on freight for half of the month of March, over last year, while there was an increase of nearly $20,000 on passengers. That has resulted, as we will show afterwards, from the enormous decrease in the movement of vegetables for that half month, and at the very best there will be a decline of 25 per cent., and some estimate as high as fifty.

JUDGE HUNT: Cannot you carry that statement right up to date, so as to make it an actual statement rather than an estimate, for the balance of the month?

MR. ST. CLAIR-ABRAMS: There is very little difference between the actual and the estimate. The figures are sent in from the bills, and there may be a difference of a few dollars one way or the other, so we hesitated to give them exactly until all the official reports were in. At the time that other estimate was made up we could not get the exact figures for February, and therefore we confined it to the 31st of January. In a day or two we will get the exact figures for February and file them. This period of March 14 is very important for this reason, that here we get into the height of the tomato shipment season, and we have an enormous falling off, just as our petition calls attention to.

JUDGE HUNT: It may go in for what it is worth.

MR. ST. CLAIR-ABRAMS: We will verify it afterwards, but it could not vary $100 one way or the other. Now, Mr. Chambers, state what that is.

A. This is a weekly statement I wrote up showing the business for the previous seven days.

Q. How did you get that up?

A. It is taken from the record of train earnings and from freight forwards.

Q. That shows how much, how many weeks?

A. That shows two weeks.

Q. Ending what date?

A. March 14.

Q. State the increases and decreases shown for those two weeks as compared with last year.

A. There is an increase of $19,510.15 in the passenger business, and there is an increase of $236.57 in baggage freight. Then there is a decrease in freight movement of $66,979.36; a decrease in express of $4,604.37 and a decrease in earnings of Lake Worth Bridge of $68.50, and a decrease in earnings of Ormond Bridge of $23.40, making a total decrease of $51,928.91.

Q. That is a net decrease.

A. Yes.

Q. After deducting the increase in the passenger business?

A. Yes.
Q. And baggage?
A. Yes; a decrease of 15.82 per cent.
Q. I offer this statement in evidence.
(The statement referred to, thus offered in evidence, was marked "Chambers Exhibit No. 2," and is forwarded herewith.)
Q. I will instruct the stenographer to make a copy of this exhibit, for Mr. Needham, and we will pay for it. Look at this paper, Mr. Chambers, and state what it represents (handing witness a paper).
A. This shows ticket sales at Key West for the month of January and February, 1912, and ticket sales at Knights Key for the month of February, 1911.
Q. What were the sales at Key West during the month of January?
A. For eight days, $2,762.53.
Q. What for the month of February?
A. $10,574.71.
Q. Is that net?
A. Yes.
Q. What were the gross receipts?
A. $11,135.79.
Q. What do you take off of it?
A. That is foreign lines, $561.08.
Q. Then it leaves net for the Florida East Coast?
A. $10,574.71.
Q. What were the total sales of tickets at Knight's Key in February of 1911?
A. The total was $2,747.70.
Q. And deducting the foreign proportion?
A. Of $57.85, leaves a net of $2,689.85.
Q. Then the business at Key West for the month of February, 1912, net to the Florida East Coast, is $10,574.71, as against $2,689.85 for the previous February at Knight's Key.
A. Yes.
Q. I offer that statement in evidence.
(The statement referred to, thus offered in evi-

dence was marked "Chambers Exhibit No. 3," and is forwarded herewith.)

Q. What is this paper I hand you?

A. This is a statement of freight earnings on Key West Extension from Miami south, July, 1910, to January, 1911, inclusive, and July, 1911, to January, 1912, inclusive.

Q. Explain how you arrive at that.

A. It is arrived at by using ton miles for freight on the extension from Miami south multiplied by the average receipts per ton mile for each fiscal year. The statement explains itself.

Q. Take the remainder of the statement; what is next?

A. That is passenger earnings.

Q. How is that arrived at?

A. That was arrived at by taking actual mileage made by each passenger on the extension from Miami south, multiplied by the average receipts per passenger per mile for each fiscal year.

Q. In making up the details, that is the actual mileage made by each passenger on the extension from Miami?

A. That is right.

Q. In making up this estimate, you only took the passengers from the different points on the main line?

A. That is, from Miami?

Q. Yes, from Miami?

A. Yes. Passengers going through from the north to Miami all go over the extension.

Q. That is what I mean. Hence, if the ticket is from Palm Beach, you do not figure that, however from Jacksonville, do you?

A. This is only on the extension.

Q. That is just the extension?

A. This is just the extension, the earnings on the Key West Extension, the earnings from Miami south.

Q. I offer this in evidence.

(The statement referred to, thus offered in evidence, was marked "Chambers Exhibit No. 4," and is forwarded herewith.)

Q. What is this paper I hand you, Mr. Chambers?

A. This is a statement of earnings, operating expenses, taxes, interest and other charges for six months, November to April.

Q. For what years.

A. The fiscal years ending June 30, 1909, 1910, and 1911.

Q. What are those red figures (indicating)?

A. That is the credit.

Q. 1908 and 1909; what interest does that refer to?

A. Interest on first mortgage bonds and second mortgage bonds.

Q. Does that mean the present?

A. No; that means the old.

Q. Those were five per cent bonds?

A. Yes.

Q. I offer that statement in evidence.

(The statement referred to, thus offered in evidence was marked "Chambers Exhibit No. 5," and is forwarded herewith.)

Q. Now, look at this paper I hand you, and state what that is; what does that cover?

A. This covers earnings, operating expenses, taxes, interest and other charges for six months, November to April.

Q. What years?

A. For the fiscal years ending June 30, 1909, 1910 and 1911.

Q. I see these red marks on the statement, referring to interest; a circle with a line through it—what interest does that refer to?

A. It refers to this note down here (indicating).

Q. What interest is that?

A. Interest on the first mortgage bonds, ten million dollars at four and one-half per cent.

Q. That is, the present first mortgage bonds.

A. Yes, the present first mortgage bonds.

Q. Does that include any interest on the second mortgage bonds?

A. It does not.

Q. What does this cross mark refer to, by the side of "Sundry interests"?

A. It includes interest on money borrowed and $520.84 interest on Jacksonville Terminal Company's bonds.

Q. Look at this sheet; what year does that refer to?

A. This is the same thing for 1910 and 1911.

Q. Does this include interest on the second mortgage bonds?

A. No, it does not.

Q. I offer these statements in evidence.

(The statements referred to, on two sheets, thus offered in evidence, were marked "Chambers Exhibit No. 6," and are forwarded herewith.)

Q. I wish to say to the Court, as I advised at the start this petition was gotten up in a great hurry, and we had no time to revise or even correct the proofs. The testimony in St. Augustine developed a most extraordinary blunder on the part of the clerk to whom was entrusted the getting up of figures as to Homestead and Knight's Key, and all over that exhibit you will find he absolutely makes the larger freight from Knight's Key than the other exhibit shows to Knight's Key. Of course, that was utterly ridiculous. I did not notice the fact until Mr. Chambers testified in St. Augustine. He did not know until then that the clerk had simply gone and figured up the mileage and made a subtraction which you or I could have done, without asking the clerk to do it, and I now want to put in the exact figures.

A. Let me see that a moment.

Q. What does that say? (Handing witness a paper.)

A. This is a statement of freight and passenger business accruing to the main line from operations

of branch lines and Key West Extension for years ending June 30, 1910 and 1911, based on actual mileage on the same line by each ton of freight and each passenger going to or coming from or passing over branch lines, and Key West Extension.

Q. Explain to the Court how you get those figures there.

A. It is explained here, based on actual mileage by each ton of freight and each passenger, taken from our records.

Q. What I want to get at is this. On this statement, for instance, I find passenger revenue for 1911 on Key West Extension, $144,978.78. Does that take from the points from which those passengers leave the main line?

A. That is the amount of business the main line gets out of the passengers going to the Key West Extension or coming from it.

Q. I offer this in evidence, and in connection therewith, with the Court's permission, I desire to make a statement, that as to these passengers we offer it, holding that it does not show the full extent of the earnings of the main line over the extension. We have got to take a ticket, for instance at Palm Beach, and the main line only apparently gets from Palm Beach to Miami, when in fact 99 per cent. of those who buy at Palm Beach come from Jacksonville, from the North, and the main line really got the benefit of over 250 miles of additional travel of that passenger before he got to the extension. I do not know that your Honor appreciates the position we take.

JUDGE HUNT: I think I do.

(The statements referred to, thus offered in evidence, was marked "Chambers Exhibit No. 7," and are forwarded herewith.)

MR. ST. CLAIR-ABRAMS: Mr. Chambers, has there been any increased pay for engineers and firemen for the fiscal year ending June 30, 1911?

A. There has.

Q. Have you ascertained what that increase in expenses will be for those two classes of employees in 1912 over 1911?

A. Our Superintendent of Motive Power gave me these figures here on my request, figuring the increased pay of engineers and firemen for 1912 over 1911, at $57,083.61.

JUDGE HUNT: That is an increase in the wage or an increase in the sum earned by reason of increased mileage.

A. It is an increase in wages.

Q. A very large increase in last December and January. What percentage of increase does that call for?

A. Thirty-four per cent.

JUDGE HUNT: Is the engineer paid by the number of miles he runs?

A. Yes, the number of miles.

JUDGE HUNT: And they increased that mileage, did they, last December?

A. That is the estimate of the increased wages for engineers and firemen for the coming year.

MR. ST. CLAIR-ABRAMS: We will have that much more actual money to pay them than we paid them last year.

A. Yes.

Q. Now, Mr. Needhan, I do not think I have proved a fact here which is alleged in the petition, but which appears in each annual report. I think we can agree as to these facts, that in the fiscal year ending June 30, 1911, we paid $40,367, for hire of equipment.

MR. NEEDHAM: Well, we have the certified copies of the reports here of 1910 and 1911, and will introduce them; so that anything that appears in those reports will be in evidence, and anything that appears in those it is not necessary to prove. We can introduce them now if it is desired.

MR. ST. CLAIR-ABRAMS: I want to put them in evidence so as to comply with the burden of proof on me.

MR. NEEDHAM: You can have them introduced now if you want to use them, and if it will save any time.

MR. ST. CLAIR-ABRAMS: That will save time.

(Informal conference followed, which the stenographer was directed not to report.)

Q. Look at this Exhibit, Mr. Chambers, in the petition, and state whether or not that is correct, as to the amount paid for ventilated and refrigerator cars during the years ending June 30, 1910 and 1911, namely, 1910, $49,367.78, and 1911, $52,660.33. How did you ascertain that, Mr. Chambers? How were those figures ascertained?

A. From our car accountant.

Q. I think we might agree on this fact. Here is a copy of the sworn annual report, showing for the fiscal year ending June 30, 1910, revenue from vegetables of $581,778.07.

MR. NEEDHAM: Is this the report to the Interstate Commerce Commission?

MR. ST. CLAIR-ABRAMS: This is our annual report, a copy of which is sent to the Interstate Commerce Commission, because that is the sworn annual report.

MR. NEEDHAM: This is the stockholders' report.

MR. ST. CLAIR-ABRAMS: I know. It is sent here and also to the State Railroad Commission.

MR. NEEDHAM: It shows on its face it is a stockholders report.

MR. ST. CLAIR-ABRAMS: Yes.

MR. NEEDHAM: Have you introduced these?

MR. ST. CLAIR-ABRAMS: I filed these before, with the motion.

MR. NEEDHAM: I have no objection to their being introduced, if counsel wants to introduce them. They speak for themselves.

MR. ST. CLAIR-ABRAMS: If the Court will permit me, I desire now to formally introduce these reports as evidence in the case. I will introduce all of them, the annual report for the Florida East Coast Railway

Company for the fiscal years ending June 30, 1909, 1910, and 1911.

JUDGE HUNT: Very well.

(The three reports referred to, heretofore filed with the Clerk of the Court, and now introduced in evidence, three in number, attached together, were marked "Chambers Exhibit No. 8," and the same are forwarded herewith.)

MR. ST. CLAIR-ABRAMS: In your testimony in St. Augustine, you gave a statement showing a large increase in the number of employes for the fiscal year ending June 30, 1911, over the fiscal year ending June 30, 1910. Did you mean in that report to show that all that increase was on your pay roll during the entire year?

A. Yes.

Q. What is that?

A. Through the entire year.

Q. You mean every man had worked a whole year?

A. I think that is it. I have not the statement before me. Have you the statement there?

Q. No. It is on file among the papers. Are you not mistaken as to that?

A. The total number employed—they would not necessarily be employed the whole year.

Q. Were not many of them not employed a whole year?

A. I could not tell you.

Q. Would every one necessarily be employed the whole year?

A. No.

Q. That is what I mean.

A. No.

Q. That is the total number that were on the pay-roll during the entire year?

A. Yes.

Q. You may take the witness.

Cross-examination.

MR. ESTERLINE: Mr. Chambers, this memorandum as to the increased pay for engineers and firemen for 1912 over 1911—there was also an increase in the number of engineers and firemen, was there not?

A. I don't know anything about that. That is simply a record I got from the Superintendent of Motive Power, as to the increase in wages for the coming year.

Q. Over what it was for 1911?

A. Yes.

Q. And it may include the wages paid to new engineers, and new firemen, which had not been in the service of the company in 1911, may it not?

A. I did not ask him for that. I asked him what increase would be due to increases in wages.

Q. You do not know what it covers; you do not know whether it covers an increase in the number of employes over the number of 1911?

A. What I asked him to give me was the increase due to increases in wages. Whether he gave me that or the other, I cannot tell. I got that just before I left there.

Q. I understand you have not any idea?

A. No.

Q. Of what that increase covers?

A. No. Those are just the figures I got from him. I got that at the last moment, before I left, and had no time to look up any further details.

MR. NEEDHAM: Unless that is supplemented I do not see how we can get any reliable information from this.

MR. ST. CLAIR-ABRAMS: Mr. Parrott will tell something about that.

MR. ESTERLINE: We reserve the right to move to strike it out.

MR. ST. CLAIR-ABRAMS: If our increased expenditures from any cause are running ahead of our in-

crease of business, that is a factor we can show to this court in sustaining the allegations of our petition.

JUDGE HUNT: All he wants to know is the basis upon which the computation is made. I take it some of these gentlemen would know. It might be an engineer getting a 15 per cent per month increase in wage, or it might be there is no increase in that engineer's wage, but that another engineer is put on.

MR. ST. CLAIR-ABRAMS: Oh, no. This is an increase in wages.

MR. ESTERLINE: The statement does not show that.

MR. ST. CLAIR-ABRAMS: We will supplement that. We will prove that we have made an increase in the amount of their pay, and that this is not a mere increase in the number of employes.

MR. NEEDHAM: This first exhibit introduced this morning, "Chambers Exhibit No. 1," showing earnings, operating expenses, taxes, interest and other charges for eight months ending February 28th, 1909, 1910, 1911, and seven months ending January 31, 1912—I understand you to mean the seven months immediately preceding those dates?

A. Yes; in one instance seven and in the others eight months.

Q. This is 1912 I refer to.

A. Yes.

Q. In these exhibits you have used the phrase "Key West Extension." Have you used that in the same sense that it appears on your books, with reference to the same part of the line.

A. The statement shows what that covers.

Q. I ask you the question: Have you used the words "Key West Extension," in the sense in which that heading appears in your books?

A. No, not Key West Extension. Most of these show from Miami to Knight's Key or Key West, as the case may be, and the statement so shows.

Q. It includes then the earnings between Miami and Homestead?

A. Certainly.

Q. And that applies to all these exhibits?

A. Where it so states, yes. I think all those show from Miami.

Q. In the exhibits numbered 5 and 6, giving a statement of earnings, operating expenses and so forth, I see there is quite a variance between the same months for the different years. How do you account for that?

A. In what, in the earnings?

Q. In the earnings.

A. We have good years and bad years. Some years have good crops and some poor. Some years get more passenger business than others.

Q. The freight upon the lines so far as fruits and vegetables are concerned, depends very largely upon the climatic conditions.

A. And the weather conditions.

Q. And weather conditions?

A. Yes.

Q. With reference to the month of March, which you have estimated here for 1912, part of the month of March which you have estimated for, what has been the climatic conditions as affecting the production of vegetables.

A. I believe the cold affected them, and freezes.

Q. Would it follow then that the shrinkage for that month as compared with other months would necessarily mean that there was a shrinkage in acreage of production?

A. I cannot tell you about that; I am not in touch with that part of it.

Q. I say, would it necessarily mean that?

A. No. I understand the acreage is more this year.

Q. And the falling off is due to climatic conditions?

A. Climatic conditions and the weather.

Q. Is it not a fact that the shrinkage of earnings as shown for the month of March, 1912, is very unusual, as shown by your statement for other years?

A. Yes, it is unusual.

JUDGE HUNT: If it depreciates, you mean.

MR. NEEDHAM: Yes.

JUDGE HUNT: Yes; I notice a very significant depreciation on freight.

MR. NEEDHAM: I have been asking them with reference to vegetables and fruits only.

In exhibit 7, which you have filed, you have given the contribution of freight earnings and passenger earnings to the main line. How has that been ascertained?

A. Upon an actual mileage basis.

Q. What freight does it refer to?

A. That refers to all freight going to the Key West Extension or coming from it and passing over the main line.

Q. And does this represent the earnings upon the main line?

A. Upon the main line, yes.

Q. The earnings upon the main line?

A. Yes, the earnings accruing to the main line.

Q. You have not put in this estimate anything regarding the operating expenses or the cost of operating?

A. No.

Q. It is simply to show the contributions?

A. Freight and passenger business contributed by the branches to the main line.

Q. This represents the gross earnings?

A. The gross earnings.

Q. Not the net earnings?

A. No; gross earnings.

Q. I show you now a certified copy of the annual report of the Florida East Coast Railway Company to the Interstate Commerce Commission for the year ending June 30, 1910, and also a certified copy of the annual report from the same company for the year ending June 30, 1911.

I will ask you first whether or not these figures are made up from your office?

A. They are, yes.

Q. So that you are familiar with these statements?

A. In a way, yes.

Q. Will you turn to the first report, for 1910, and point out in that report what rentals are paid for cars?

A. Yes, here it is.

Q. On what pages does that appear?

A. On page 79.

Q. The rental consists of two descriptions, the first the interchange, equipment interchanged, and then the equipment which has been hired, under the title of "Private cars"?

A. Yes.

Q. What does interchange mean, on page 77?

A. Those are ordinary cars, I presume, and these are refrigerator and other cars. These are ordinary freight cars (indicating).

Q. Are those on page 77, under the title "Equipment interchanged" cars that are strictly rented, or is it compensation paid for foreign cars passing over your rails?

A. It is compensation paid for the use of foreign cars.

Q. For local business or for interstate business?

A. Both; mostly through cars. Most of them go through.

Q. On page 79, under the head of "Hire of equipment, see private cars," what does that represent?

A. It represents refrigerator cars, tanks and horse cars.

Q. Under the "Name of owner" and "description?"

A. Yes.

Q. Does this include all of the rentals during the year?

A. Yes.

Q. What does that show the total rental to be of private cars?

A. $24,106.34.

Q. Is that correct?

A. I think so; so far as I can see.

Q. That includes all the rentals for that year?

A. No, it does not. Here is the total rents for the year, $74,000.

Q. That includes the interchange equipment which is listed on page 77, does it not?

A. That includes all the per diem, yes.

Q. That does not include on page 77 the refrigerating cars which you have referred to in your testimony?

A. It covers it all, I guess.

Q. I asked the question.

A. What question?

Q. Does that include on page 77 all rentals of refrigerating cars?

A. Not on this; here are refrigerators here (indicating).

Q. Does it include anything on page 77?

A. It does not say so, no.

Q. Well, does it, in fact?

A. I could not tell you; I don't think so.

Q. Does it not itemize what they are.

A. It is itemized.

Q. Is this a true statement?

A. Yes.

Q. Refrigerator cars are listed on page 79?

A. Yes.

Q. And that includes all refrigerating cars that were rented during that year?

A. To the best of my belief, yes.

Q. Look at the report for 1911. What was paid for interchange of cars for that year?

A. $102,532.13.

Q. What was paid for rentals of cars that year, private cars?

A. $17,759.28.

Q. As shown on what page?

A. Page 79.

Q. Is that a correct statement of the rentals?

A. Yes. There may be refrigerator cars here not

owned by private lines. That I do not know anything about. I won't say that.

Q. Well, if they were rented by your company—

A. If they do not belong to private lines they would appear here (indicating); if they belonged to private lines they would appear here (indicating).

Q. How is that?

A. These are private lines only.

MR. ST. CLAIR-ABRAMS: Don't say "here"; give the page.

A. Page 79.

MR. NEEDHAM: Page 79 shows all the cars that you have rented?

A. It says "private cars."

Q. Wait until I get through. We will get this all right.

Page 79 shows all the cars you have rented as private cars from private owners?

A. Yes.

Q. And page 77 shows the amount of rental paid for cars interchanged, or equipment interchanged?

A. Yes; that is, from other lines.

Q. As described in the first column?

A. Yes. As I say, there may be all refrigerator cars in there; that I don't know.

Q. Well, are there?

A. I don't know.

Q. There are none specified here in the list.

A. I do not see the cars, you know. I go by the reports.

Q. Would the report be true or not?

A. It would be true as far as the cars go, and the numbers.

Q. Would the description in this report be true?

A. It would be true as far as the report goes. You see what the report calls for.

Q. In the list on page 77 there are no refrigerator cars mentioned.

A. None mentioned, if they don't belong to private car lines. That would be included in 77; not here.

Q. On page 79 refrigerator cars are expressly mentioned.

A. As belonging to private car lines.

Q. Yes, and rented by your company?

A. Yes.

Q. From private car companies?

A. Yes, as we specify there; they are itemized.

Q. Would you receive over your line refrigerating cars that were passing from other lines to your lines?

A. You had better ask somebody else about that because that is not in my line at all.

Q. Do you know?

A. No.

Q. Have you any information on that subject?

A. No sir; I don't know anything about refrigerating cars.

Q. Would refrigerating cars be set down onto your line to be filled with fruits or vegetables by other lines and listed under the title "Exchange of equipment"?

A. They would be delivered to our line as so many refrigerator cars, or others as they might be.

Q. That is, if they belonged to railroad companies?

A. Yes.

Q. I don't know whether it is necessary to have these reports identified now. I am going to introduce them in evidence.

MR. ST. CLAIR-ABRAMS: I want to re-direct him on them.

MR. NEEDHAM: You can have these. I do not know as it is necessary to interject them here as a part of this witness' testimony; but they are certified copies.

JUDGE HUNT: Why not introduce them now, as they are properly referred to in connection with this witness' testimony?

MR. NEEDHAM: Very well. Then I will introduce these two certified copies of the reports referred to by the witness.

JUDGE HUNT: Let them be properly marked.

(The certified copies of the Annual Reports of the Florida East Coast Railway Company to the Interstate Commerce Commission, referred to, thus offered in evidence, were marked, that for 1910 as "Chambers' Exhibit No. 9," and that for 1911, "Chambers' Exhibit No. 10," and are forwarded herewith.)

Re-direct examination.

MR. ST. CLAIR-ABRAMS: You have been questioned as to this report, on pages 77 and 79, by Dr. Needham. Is that confined solely to refrigerator cars?

A. These are refrigerator and ventilator cars.

Q. Refrigerating cars are one thing and ventilating cars are another; are they not?

A. That is right.

Q. Now, on this page 79 I find the words "ref." That means refrigerator, does it not?

A. That means refrigerator (indicating) and this means refining (indicating).

Q. But under the head of "Description of cars" it means "Refrigerator cars"?

A. Yes.

Q. Now, are not the ventilator cars embraced in page 77?

A. They are, the ordinary freight cars, Pennsylvania cars and others.

MR. NEEDHAM: Are they so specified on page 77, as ventilating cars?

A. No.

Q. Then you have a special knowledge with reference to those cars. I understood you to say on cross-examination that you did not.

A. Just that in a general way I know the ventilated cars are ordinary cars and refrigerator cars are others.

Q. Then those cars are taken from other roads?

A. Yes.

Q. As exchange equipment?
A. Yes.
Q. And not as private cars rented?
A. Not as rented cars.
(Witness excused.)

F. W. KIRTLAND,

resumed the stand as a witness in behalf of the petitioner, and testified as follows:

Direct examination.

MR. ST. CLAIR-ABRAMS: Are you familiar with the character of the traffic, whether freight or passenger, over the main line, from Miami to Jacksonville, and the branches that go over the extensions?
A. Yes.
Q. Is there any local traffic amounting to anything that would originate at Miami and go over the extension?
A. Very little.
Q. With regard to the passenger traffic is there any local passenger traffic that would originate at Miami going over the extension to any extent?
A. Not to any great extent.
Q. Is there any Cuban or Spanish population amounting to anything on the line of the Florida East Coast Railway?
A. No, sir.
Q. Are there any large cigar factories at Miami like there are at Tampa?
A. No, sir.
Q. Could you state from your personal knowledge approximately about what percentage of the passenger traffic which goes over the extension from Miami comes over another line from Jacksonville?
MR. NEEDHAM: I object to that question. The purpose of that is to support the statement made by

counsel that passengers who take the cars either for Key West or Cuba, from intermediate points on their line, have come over the line from Jacksonville.

Now, there is another way, so far as the evidence shows, of demonstrating that fact, of proving it as a definite fact. We all know that as a matter of fact. I am not disputing that, that the passenger traffic over this line is largely what is known as tourist traffic, passenger traffic. But for him to give an estimate as to what he thinks is the proportion of those that pass over the extension, that has gone over another main line, it seems to be to have no sufficient foundation in fact to warrant such an estimate.

JUDGE HUNT: I think he can answer, and then you can test the value of his opinion. Let him answer subject to objection. Go ahead.

MR. ST. CLAIR-ABRAMS: State if you can, approximately.

A. I would like to have the question read.

(The stenographer read as follows:)

"Q. Could you state from your personal knowledge approximately about what percentage of the passenger traffic which goes over the extension from Miami comes over another line from Jacksonville?"

A. I should say practically all of it. I do not suppose there is a per cent of it that does not come over the line from Jacksonville south—certainly there would not be as much as 2 per cent.

JUDGE HUNT: Not as much as 2 per cent?

A. I am certain there would not be as much as 2 per cent.

MR. ST. CLAIR-ABRAMS: State to the Court how you have derived the knowledge upon which you can base that estimate.

A. I derive it from the fact that I am traveling on those trains, especially between Miami and Key West frequently. I have made three trips within a month, just previously. And I get it from the fact that I see where the travel comes from, talk to the

people, and see who are on there; seeing and talking with the people who are traveling themselves, knowing where they come from. And I further know from my experience in traveling there that there is nobody from Miami and that section that goes to Cuba. It is the rarest thing in the world to ever see or hear of one. Everybody on the train is from the North. A great many of those people stop at different points going south. They will stop at St. Augustine, Ormond or Miami. They might take the train at Miami for instance. That would be their last stop. They would get on the train there, and almost invariably it is nearly always true they are traveling on through tickets and only stop intermediate.

Q. Is not that fact notorious on the line of that road?

A. Oh, yes. It is known to everybody who travels there a great deal and who watches it.

Q. Have you a table with you showing what fluctuations there have been in vegetables and citrus fruits, pineapples? Have you got that up yet, showing the volume from year to year?

A. I filed that at the last hearing.

Q. Did you?

A. Yes; that was filed at the last hearing.

Q. As bearing upon the question of rates, since you testified before the Court in St. Augustine, have you had to make an investigation as to the condition of the crops?

A. I have.

Q. Up to the present time?

A. Yes sir.

Q. What is the volume as compared with last year?

A. I filed a statement at the last hearing as to the movement this year compared with the previous year. I have not any further statement with me. But the report does show that the same percentage of decrease is continuing, about 50 or 60 per cent decrease. But taking the growing crop itself, that is the thing I

made an investigation about, as to what the prospects of the movement were, in order that we could provide the necessary equipment.

I went very thoroughly over the whole tomato growing section, talking with all of the growers, and I could not find a single grower who would venture the opinion that the crop this year would be any more than 50 per cent of last year's movement. Many of the most reliable growers, the people whose opinion we place the greatest confidence in, told me they did not believe it would be over 40 per cent.

Q. What is the cause of that?

A. The cause first was cold weather, that killed out a great deal of young plants. Then we have had excessive rains. I spent Friday and Saturday there, and that is the opinion given to me then. On the following Monday they had a terrific rain and hail storm, and nothing in the world will tear a crop to pieces quicker than hail. That was the information gotten on that trip, Friday and Saturday. And the weather conditions have been very bad since then.

Q. Could you or can you from your knowledge of the whole condition, regardless of what individuals told you, taking the most favorable view, say what would be the crop this year, as compared with last?

A. While it is my own personal opinion, after making this examination with the growers—well, I ought to correct that, too. It is my opinion that if we have favorable weather conditions from now on the estimate of the growers would be too little. My experience with growers has been they are inclined to be pessimistic. The report that I made to our management, and the thing which I am basing my requisitions on to connections, in ordering equipment—and I am hoping the weather conditions will be favorable—and if they are, I hope we will get 75 per cent of last year's movement. But I do not believe it will be possible to get more than that, under favorable conditions. Based upon that shortage it will result in a loss of freight revenue in that one

item of vegetables, of approximately $125,000, as compared with last year.

Q. At our existing rates there?

A. At the rates now in effect, yes.

Q. Have you any information as to the extent of the bloom on the citrus trees this year?

A. I have not.

Q. As compared with last year?

A. No. I have not made a full investigation of that, and my information is incomplete. I have only gotten it in sections where I would not care to express an opinion.

Q. Can you give the Court some idea of the price of tomatoes in the Northern markets last year while the season on our road was at its height?

A. Yes sir.

Q. State what it was. Have you any memorandum with you?

A. I have it all in my head.

Q. Have you?

A. Oh, you bet. I know all about it.

Q. How do you know it?

A. I know it from a very careful report daily of market prices all over the country, and also verified in the settlement of claims. Take New York as a typical market. The prices this last year ranged on fancy tomatoes from $1.12 to $1.37, which is an average of $1.25.

JUDGE HUNT: What is that; a standard crate?

A. Per crate, yes, a crate of 50 pounds—$1.25 for fancy tomatoes and $1.125 for choice. Those are the prices which prevailed during the heavy shipping season, about this time, last year.

MR. ST. CLAIR-ABRAMS: What would be the cost, picking and packing and freight on a carload of fancy tomatoes that sold for $1.25 in New York?

A. The average price for packing tomatoes is 35 cents a crate. That includes all of the expense in packing, half including the cost of the crate and the paper for wrapping.

Q. What would be the freight?
A. That is the package charge, now.
Q. That 35 cents is not picking and the packing?
A. Not picking. I did not give the picking.
Q. What would be the picking?
A. The picking would be 5 cents a crate.
Q. That would make a total of 40 cents for picking and packing?
A. You do not want the hauling?
Q. What would be the hauling?
A. That varies according to distance; an average of about 2.5 cents.
Q. What would be the average freight from the center of this district?
A. To New York?
Q. To New York.
A. 55 cents a crate.
Q. Then at the height of the season a shipper to New York would get $1.25, in New York, last year for what cost him 95 cents to pick, pack and ship to New York?
A. Yes.
Q. How do you account for those low prices?
A. Last year.
Q. Yes.
A. There were too many tomatoes raised.
Q. The market was glutted?
A. The market was glutted, yes.
Q. What is the price at this time?
A. They are selling in New York now from $3.25 to $3.50 and freight.
Q. The same grade of tomato?
A. Yes, the same grade of tomato.
Q. Do you know what that tomato is selling at f. o. b. point of production at this time?
A. Yes sir.
Q. What?
A. It is selling from $2 to $2.25.
Q. Then it is selling for nearly double in Florida at the point of production, today, what it brought in New York last year?

A. Yes sir. I saw a contract made last year where a man contracted to ship his whole crop at $2 a crate for the entire season.

Q. This year?

A. Yes sir.

Q. F. o. b.?

A. F. o. b. shipping point, and that point was south of Miami.

Q. And it is now selling at the point of production?

A. From $2 to $2.25; as a rule about $2.15 is what they are getting. It depends on the packing. You know some growers have better packing.

Q. Who pays the freight from the point of production where they are getting from $2 to $2.25?

A. The buyer pays it.

Q. The grower has no freight to pay?

A. None at all. It is all being sold f. o. b. at the point of production.

Q. I think you stated in your last examination it is only in years when there is a glut that any amount of the tomato shipment is not sold at the point of production.

A. That is correct.

Q. Then the grower with a short crop this year will get considerably more money than he got from his entire big crop last year, will he not?

A. Every indication points to it.

Cross-examination.

MR. NEEDHAM: From your investigation is the shrinkage in the crop this year due to a shrinkage in acreage or to climatic conditions?

A. It is the climatic conditions. I will state for your information our records show the acreage this year is just about 150 acres in excess of last year. It is altogether due to climatic conditions.

Q. That is all.

JUDGE HUNT: Referring to the tomatoes, is there

any other section of country that sends tomatoes to the market in New York at this particular season other than Florida?

A. Not at this particular season. The only competitor that Florida has that is shipping at the same time is Cuba, and they are not an appreciable competition. They usually start shipping from Cuba about the first of December, and they do not as a rule begin shipping from Florida to any extent until about the first of February. So that when Florida begins there is a little lap over with Cuba. But about the time Florida begins shipping in carloads Cuba stops shipping. Cuba grows a very inferior tomato, and they cannot compete with Florida tomatoes in the market at anything like the same price.

Q. Does anything come from Southern California?

A. Not in competition at this season of the year.

Q. Nothing from Louisiana?

A. No. The next section which comes in after Florida—well, there is a season commencing about the middle of April where there are some tomatoes shipped from other sections of Florida further north.

Q. What immediate country adjacent to your line produces the bulk of these tomatoes?

A. None at all, while we are shipping. The west coast of Florida ships a few beginning about the middle of April, but there is no other section shipping, not while we are shipping.

Q. But what I meant to get out was what immediate portion of Florida that is tributary to your line gives you this freight, south of Miami.

A. South of Palm Beach. It begins a few miles south of Palm Beach and extends about a mile south of Homestead. It is a section covering in extent from north to south about 85 or 90 miles. All of the tomatoes, practically all of them shipped via our line are shipped from that territory.

Q. What is your estimate of the acreage in tomatoes that contribute this shipment?

A. It is 11,136 acres.

MR. NEEDHAM: I would like to ask just one more question. Measured in the receipts from freight rates what proportion do tomatoes bear to the balance of the shipments of vegetables as given by your company?

A. We do not keep that separately. Our reports all simply show vegetables.

Q. Can you tell it from the acreage?

A. Well, we do not separate the acreage either. The vegetable acreage is all shown together, but I should say the tomato shipments represent approximately 92 or 93 per cent of the total vegetable movement.

Q. You include now your potato shipment?

A. No; potatoes are not included in that. These are vegetables from the lower tier.

Q. As shown in the list attached to the petition here entitled "Vegetables," what is included in that list?

A. In that list potatoes are also included. That includes all vegetables. If you will notice the heading it says all equivalent to 50 pound packages. We could not separate it in any other way. So we had to take the total tonnage as furnished by the auditing department and simply divide that on the basis of 50 pound packages.

Q. That includes the shipments on the entire line?

A. Yes sir.

Q. From Jacksonville south?

A. Yes sir.

Q. With reference to the entire shipments of vegetables from Jacksonville south, what proportion are tomatoes?

A. You mean of the total tonnage, or only in vegetables what proportion is tomatoes?

Q. Tonnage or receipts from freight; I don't care how you get at it.

A. It is different kinds of packages. Potatoes are handled in barrels only and weigh 155 pounds.

Q. Give it in tonnage or receipts, as you like.

A. In tonnage the tomatoes represent about two-thirds, the other third being miscellaneous vegetables and potatoes.

Q. That is all.

Re-direct examination.

MR. ST. CLAIR-ABRAMS: Mr. Kirtland, in the matter of potatoes this year, what is the prospect?

A. That is rather indefinite yet. There has been no damage up to this time. They had very heavy rains Saturday night, Sunday and Monday. I passed through the potato section, and I noticed water standing there in the rows pretty badly, but I do not think there has been any damage to the potatoes especially.

Q. There has been much delay in planting?

A. They have been delayed coming into bearing, but if we do not have too much more wet weather I think the potatoes will be all right.

Q. I do not exactly understand Dr. Needham's question as to the proportion of tonnage, whether he referred to the entire tonnage or simply the tonnage of vegetables, the proportion of the tomato tonnage to the balance of the vegetable tonnage. I understood him to mean what proportion of the vegetable tonnage.

A. Not the entire tonnage on the road?

Q. Yes.

MR. NEEDHAM: That is right; that was so stated.

MR. ST. CLAIR-ABRAMS: I did not quite catch it. You testified before in St. Augustine as to the refrigerator and ventilating cars did you not?

A. I did.

Q. A refrigerating car and a ventilating car are two separate cars, are they not?

A. It is a different class of equipment.

MR. NEEDHAM: He described that in the testimony.

MR. ST. CLAIR-ABRAMS: But you put in evidence

something, and questioned Mr. Chambers on a branch that he had nothing to do with, and on which he could give no information.

These ventilating cars you get from the Seaboard Air Line, the Atlantic Coast Line and so on?

A. And the Southern Railway.

Q. And the Southern Railway?

A. Yes sir.

Q. That is all.

Re-cross-examination.

MR. NEEDHAM: The cars that are received from the Seaboard, Southern and other lines of railroad, are paid for on the basis of mileage?

A. No, sir; they are paid for on the basis of per diem.

Q. On the basis of per diem?

A. Yes sir.

Q. What is the rental paid by your company for these cars?

A. It is the standard per diem rate of the American Railway Association. In the Spring months it is 30 cents a day and in the Fall months 35 cents a day.

Q. That includes how much of the time, say from the delivery at Jacksonville and the return to Jacksonville?

A. We pay for it all the time we keep it. The only exception to that is if they deliver us a car today and it is returned to them in 24 hours, there is no per diem. But of course we cannot take a car down the road, load it and get it back inside of the free time.

Q. Aside from the free time, then you pay from the time of its delivery at Jacksonville to your road until its return?

A. Yes sir.

Q. To Jacksonville and delivered to the other road?

A. Yes sir.

Q. That applies to all cars from whatever road they may come?

A. That applies to all of the cars except special and private equipment.

Q. When you say special, do you mean private?

A. Private equipment, yes. Take the Armour Car Lines, for instance. They are paid for on the mileage basis. We use quite a lot of Armour cars in moving these shipments.

Q. That appears in your report to the Interstate Commerce Commission as cars rented from private car companies?

A. I don't know about that.

Q. You are not familiar with that?

A. No, not as to how it appears in the report.

Q. That is all.

(Witness excused.)

J. R. PARROTT.

J. R. Parrott, a witness heretofore sworn, resumed the stand in behalf of the petitioner, and testified as follows:

Direct Examination.

MR. ST. CLAIR-ABRAMS: Now, Mr. Parrott, Mr. Chambers has put in here a report or a statement as to the increased cost for engineers and firemen for the next year, this fiscal year 1912, as compared with the fiscal year 1911. Can you state whether that increase is the result of an increased number of engineers being employed, or an increase of pay of your force, one or both, and to what extent of one or the other?

A. I take it that does not include any additions to the force, but I do not know actually what Mr. Miller may have included. Instructions for all the figures on this line that I have given have

been to give me the actual increase based upon the increase in wages. If we have added any engineers for a year, so far as the mechanical department is concerned, that increase would not amount to over four or five thousand dollars for additional force. I mean if Mr. Miller has included them in that. In other words we have only added 45 miles to the operations of the road, and the mechanical department would not require over four or five thousand dollars to cover any additions necessary to its employes.

Q. Have you personal knowledge of any increase in the pay of engineers and firemen?

A. Only that we have increased both of them. I do not recall just the amount of them. But I know we have increased both of them, both the engineers and the firemen.

Q. Has that increase been since June 30, 1911?

A. That took effect January 1, 1912, and the same is true of the train-men.

Q. Did you increase the pay of others than firemen and engineers?

A. The trainmen and clerks generally; the employes generally.

Q. Then this $58,000 that Mr. Chambers has testified to does not show the entire figures of expense that you will be at?

A. As I heard his testimony, no.

Q. Can you state approximately if you have investigated how large an increased expenditure will be imposed upon your company by reason of the increased pay for all your employes since June 30, 1911, can you form an estimate?

A. Why, it would only be an estimate; I have not been over it. I remember when these matters first came up we approximated what it would cost, and I recall some figures that have been given me since, but I have made no direct investigation.

Q. Can you make an approximation? 1912 is not here.

A. Somewhere in the vicinity of $200,000.

MR. NEEDHAM: I object to that, your Honor, unless there is some showing, which seems to me ought to be very easy, of the percentage of increase upon these different employes, or an actual increase, in their running or monthly wage, whatever it may be. To come in here and give a lump sum, and state it as he has already stated it, seems wholly incompetent.

JUDGE HUNT: Are you going to follow that up with some division?

MR. ST. CLAIR-ABRAMS: Yes sir. In fact, I think one exhibit here pretty clearly shows the enormous increase, already, because we show a $20,000 increased monthly expense already over the last year, for seven months of this fiscal year; yet our business, the amount is not as big as it was for the same time last year.

Now, Mr. Parrott, you have testified that as regards the road from Jacksonville to St. Augustine all you know of the figures of so much stock and bonds, appear on the books. With regard to the other roads, were they purchased and deeds given for them, or were they simply merged?

A. They were all purchased in the same way, that is up to Smyrna and the branch lines in the same way. The road between St. Augustine and Jacksonville was purchased, and that with the others was ultimately absorbed into the Florida East Coast under deed. They all came to the Florida East Coast by deed.

Q. In the construction of the road did you receive any right of way donations of lands now used by the railroad company for railroad purposes?

A. Oh yes. A very large part of our right of way came by donation, a very large part of it.

Q. With regard to the land used for railroad purposes other than mere right of way proper, was not a large part of it donated to the company?

A. The major part of it we had donated until we began operating. Of course in subsequent years we have had to buy, and have bought a great deal of it.

Q. You have to buy now, do you not?

A. Yes sir.

Q. Then in your books is there anything to show what the value of those lands were that were donated to you?

A. Nothing at all.

Q. These lands have considerable value at this time, many of them, have they not?

A. Well I should suppose they have by the prices we are having to pay for those we purchase now.

Q. Does the East Coast operate any railroad outside of the State of Florida?

A. No sir.

Q. Now, Mr. Parrott will you explain the two existing mortgages. No. First explain the two mortgages that existed prior to these present mortgages.

A. The mortgage of 1896 was a mortgage for $7,259,000. That was a first mortgage on the major part of the property and did not include the line south of Miami. It did not include the Mayport Branch or the Titusville Branch. The second mortgage in 1903 was for $13,000,000 and a fraction, but only $6,000,000 of it was issued.

Q. What did that include?

A. That included all the branches. I am not sure about the Homestead extension. In 1909 those mortgages were taken up and a mortgage for $12,000,000 was issued as a first mortgage on all properties, including the Key West extension. Only $10,000,000 however was issued. Another million has been authorized since that time. Under the terms of the mortgage we have a right to issue or take up $500,000 a year in betterments and extensions of the old line. A second mortgage, or an income mortgage, was made for $25,000,000.

Q. How many of those have been issued?

A. Only twenty million.

Q. At this time there are actually outstanding ten million of first mortgage and twenty million of second mortgage?

A. Yes sir; with the additional million authorized by the board of directors under the terms of the mortgage. Whether they have been sold or not I don't know.

JUDGE HUNT: That is as to the first mortgage?

A. Yes.

THE COURT: That would be eleven millions then?

A. Yes, if they had been sold. It was only authorized on the 22nd of January, we having spent over a million dollars in equipment and betterments since 1909.

MR. ST. CLAIR-ABRAMS: That was limited to 4.5 per cent?

A. 5 per cent, for the second mortgage. The first mortgage was 4.5 per cent.

Q. This additional million if issued this year would add $45,000 to your fixed charges, would it not?

A. Yes sir, and it undoubtedly will be disposed of during the year.

Q. You have testified that during the last fiscal year you paid upon the second mortgage bonds 4 per cent interest?

A. Yes sir.

Q. And twenty millions. Have you kept posted as to the earnings and estimated earnings of the present fiscal year, so far?

A. Only in a general way, as I look at them every week and every month as they come in, but I have no impression of them at all.

Q. You have seen these—

A. (Interposing) I have seen the shortages in earnings and the increases in earnings.

Q. From the present indications for the fiscal year ending June 30, 1912, can you say whether or not you can earn more than 4 per cent on those second mortgage bonds, or as much as 4 per cent?

MR. ESTERLINE: That goes under the same objection, I suppose?

JUDGE HUNT: Yes.

A. With the present outlook I doubt if we can earn 4 per cent on them this year.

MR. ST. CLAIR-ABRAMS: Mr. Parrott; It has been claimed that the extension of the road to Key West was purely to erect a monument to Mr. Flagler, and not as a purely business proposition. Will you state—

MR. ESTERLINE: (Interposing) Wait a minute. Who made that claim?

MR. ST. CLAIR-ABRAMS: That has been the one cry that has been dinned in my ears in season and out of it. Magazine articles were read by Dr. Needham to show it was only a monument, I want to show it was only a cold blooded business proposition from beginning to end.

MR. ESTERLINE: We object to that question.

MR. NEEDHAM: If it has any bearing at all I do not want it to be assumed that we have taken such a position as that, because we have not, that it was a monument to Mr. Flagler.

MR. ST. CLAIR-ABRAMS: State the origin of this whole matter and the purpose of the company, of Mr. Flagler, if you please, in that construction to Key West.

A. I don't know any more than Dr. Needham does as to what is in the back of Mr. Flagler's mind, but I do know it was undertaken as strictly a business proposition, upon a business basis.

Of course we had no idea and no means of knowing when we started—we thought we did—where we were going to bring up. But as the business has developed, a great deal of business has shown that can be reached by the property that makes it even a better proposition than we had originally expected.

Q. Mr. Parrott, much has been said about the charter obtained in 1905, or granted by the Legislature. Is it not a fact that before that became a law, before that charter had been obtained, you had resumed work from Homestead going south?

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A. We were completing the surveys, the actual location, but my recollection would be that the charter was obtained in 1905 in June, and we did not put any considerable force in until after that charter was obtained. We did not have during the Summer over five or six hundred men. About the latter part of October of 1905, we did begin putting in large forces.

Q. I find in the last pamphlet published by the East Coast the statement that you commenced pushing work in April, 1905, from Homestead south.

A. Well, you might call that pushing.

MR. NEEDHAM: What pamphlet is referred to? I should like to know.

MR. ST. CLAIR-ABRAMS: We gave each of you a copy in St. Augustine.

MR. NEEDHAM: Oh; the official pamphlet that was issued at the time of the opening of the road to Key West?

MR. ST. CLAIR-ABRAMS: Giving a history of the road and so forth.

A. I am not altogether responsible for those pamphlets. I can only say this, that we did have our forces in the field and we had employed and made an organization for that work, and that was all prior to July. But the actual men on the construction we did not have in at that time. They were not in there until some weeks later, and during that entire summer we did not have over five or six hundred men in there, until as I say, the last of October when we began improving very rapidly.

Q. Now some testimony has been given with regard to the effect of these tropical storms on the embankments of the line of the extension. Has your company taken any precautions to meet these tropical storms? If so, what have they done, and what has been the result?

A. It is the opinion of our engineers and also my opinion that when we have completed that line it will be just as little trouble to the operating de-

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partment as any other part of the entire line that we own. In other words, the exposed situations are all met, and more than met. And we cannot feel with the character of that work, that there is any more danger to any of it being taken out than there would be to any other part of our entire line.

MR. NEEDHAM: I want to object especially to what he says the engineers' opinions are.

A. I said "and mine."

Q. As to his opinion that is another matter. But when he says it is "the opinion of our engineers," I think we are entitled to have that go out.

JUDGE HUNT: As to the other engineers the objection is well taken but part of it is his own opinion, and that of course is another matter.

MR. NEEDHAM: We are not objecting to that. What do I understand the ruling to be?

JUDGE HUNT: I regard it as fully competent as far as his own opinion is concerned. I should think your objection was well taken that he could not state what the opinion of the engineers was.

MR. NEEDHAM: Do I understand that part of it is stricken out?

JUDGE HUNT: Yes. I should take it as his own opinion.

MR. ST. CLAIR-ABRAMS: Have you made any tests in that regard?

A. We have not, but nature has. We have had two very severe storms during that period. None of what we call our permanent work has been destroyed. We did lose some work that we had expected to consider permanent, but we changed the character of that work after those storms and put in the same character of work as we had found withstood the storms.

Q. That is what I want you to explain to the Court, as to that permanent work which stood that storm, and the character of it.

A. The character of the work?

Q. Yes.

A. Well, in the first place, take the openings at Long Key and Knight's Key, the Long Key opening is over five miles. Two miles of that is of concrete arch construction. In constructing that work we were practically in an open seaway, and we were required first to meet the forces of the waves' weight enough to overcome the power of the wave, taking the highest waves that we knew in that vicinity that had occurred getting it from history and from marks, and everything of that kind, so that the weight of the material itself, the bridge construction, resting upon the bottom, would have met the greatest stress of the greatest wave that had ever been known in that section. To make assurance doubly sure we have two additional factors of safety. We put in a cluster of piles in the leg of each arch, driving them into permanent moisture and cutting them off of permanent moisture, from fifteen to sixteen piles. Then the concrete forms a perfect bond with the bed of ocean rock. If it has not been cleared off we clear it off, and that concrete forms a perfect bond. That was our strongest form of construction.

In the Knight's Key opening originally we intended to put in three and a half miles of construction similar to that at Long Key, but we found we could make a considerable saving as we did not have quite the stress there, so we put in a cheaper form of construction. That is, steel girders with a concrete lift. It saved us about $200,000 a mile. We had determined that and started that with the storm of 1909. We had some embankments in portions of the opening, put in about three and a half miles of embankment, imbedded in rock. And those storms took the embankment out, and we changed the character of the opening, which was originally three and a half miles, to a seven mile opening, with approximately over five miles of girders and piers, and about 9,000 feet of concrete arch, built upon lighter and less expensive lines.

JUDGE HUNT: I think this is a good place to take a recess.

(Thereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock.)

After Recess.

J. R. Parrott, the witness under examination at the time of taking recess, resumed the witness stand:

MR. ST. CLAIR-ABRAMS: I offer in evidence this map showing the lines originally followed in 1907-8 by Wilson Huddlestone and Morse, which map was filed in evidence in the case of the Trust Company of America vs. The Railroad Commissioners of Florida, which I have been permitted by the Court to withdraw from the record in that case.

(The map referred to, a blue print, was marked "Parrott Exhibit 1.")

Q. In your testimony in St. Augustine, you included everything to Avenue G?

A. Yes, I stated specifically that we made the reservation from Avenue F five hundred feet west, and parallel with that street, which is Avenue G, straight to the river.

Q. I also find that the tract from this red line to here is also reserved.

A. Yes, that tract is reserved for railroad purposes.

MR. NEEDHAM: That is, the un-subdivided tract south of block 135, to the river.

A. Yes.

MR. ST. CLAIR-ABRAMS: I find 31 lots also reserved in blocks 64, 86, 87—

A. 87 is on the other side.

MR. NEEDHAM: Do you mean 87 or 97?

MR. ST. CLAIR-ABRAMS: 87; 97 and 107.

A. 107 is over here.

Q. 124, north.

A. That is down here.
Q. 134?
A. Yes.
Q. 135?
A. Yes.
MR. NEEDHAM: You do not mean the whole block?
A. Certain lots I think in those blocks.
MR. ST. CLAIR-ABRAMS: yes.
A. How many lots in 135?
Q. 12, 13, 14, 15, 16, 17, and 18. Are these lots you described in your testimony in St. Augustine as having been reserved by your order for the uses stated by you then?
A. Yes, sir, they are.
Q. And for the actual use of the road?
A. For the actual use of the road in the immediate future, some of them, and for present use, some of them, but none of them for anything except the immediate or future use of the company.
Q. I think this one was for storage purposes?
A. Yes, sir.
Q. I am pointing to the land between the red mark on the plat now filed, and Avenue G.
A. Yes, sir.
Q. Can you recall when this last batch of lots were ordered by you to be reserved for railroad purposes?
A. I should think about three years ago.
Q. At that time when we took the recess for luncheon you had testified in regard to the work on the extension, and the measures being taken by you for the permanency of the structure. In regard to those embankments, what are you doing toward protecting them from future storms?
A. I would say that the work of that construction has been in a measure a matter of development; that we have had to be influenced to a very considerable extent by the experience that we have had from year to year with the elements. I described this morning the reasons for our changes from one character of

work to another, made necessary by the hurricanes. In the more protected sections of the line we have found that we can maintain with positiveness an embankment covered by marl found in that country, which is certain. That developed on some of the lower work in this way: We had an embankment blasted up and thrown up, for two thousand feet, an embankment of rock. Adjoining that for nearly two thousand feet, we had an embankment thrown up, an embankment of marl.

JUDGE HUNT: What is marl?

A. It is rather a clayey substance. It is more like clay than anything else.

MR. ST. CLAIR-ABRAMS: Do you find it down there in Florida?

A. Yes, sir, we find it in the beds of that bay and the ocean there. I have often said about it that when you get it into an embankment it does not furnish anything for the finger of the wave to get at. It is a smooth surface. There is more or less attrition, but no more attrition than is found upon an ordinary sand embankment in the general country. It presents a smooth surface to the wave, and the wave will come to it and not wash it, except to make some attrition. The rock, especially if you have any of the harder rock will scour, and the moment you get a scour you begin to get a break. The waves washing over it and washing back will make a cut in the embankment and will destroy it; but with this marl, with three years experience we have not yet discovered that it makes any appreciable destruction due to storms.

Q. Has this marl gone through any big storms?

A. It went through 1909 and 1910. We had no storms in 1911.

Q. From those two storms, what was the effect on this marl-covered embankment?

A. It did not affect it at all, apparently.

Q. Are you protecting your embankments now with this marl?

A. Wherever we are putting in embankments, we are protecting them with this marl. The embankments are only put where we have a sand bank and outer protections. We do not undertake to put in the marl where we have not got those outer protections. Sometimes those protections will run, never less than half a mile, and sometimes two and three miles with very shoal water out against them; but wherever we have got any open water which will present a volume of water, there we have always provided for the concrete work.

Q. Open concrete?

A. Open concrete work.

Q. Go on and state.

A. At one time we put out more or less expense upon these banks with the idea that we could maintain them with rock, that is putting in a sand center and more or less marl, but covering the entire embankment with rock, that light Miami rock, but in almost every instance where we had that rock, it cut out, and we had to abandon it, and went back to the marl. And so sure are we that that will maintain, that since 1909 all of our embankments have been covered with that marl, and we have never yet had any experience which would throw doubt upon our judgment.

Q. It has stood the big storms?

A. It stood the big storm of 1910.

Q. Go on and state in your own way all of the facts concerning that work.

A. I have covered the ground fairly well. I don't know how far you want me to go into the construction of that extension. If it is a question as to the permanancy—

Q. I want you to go into the whole question, because the question of the extension is involved in the issue of this case.

JUDGE HUNT: Mr. Parrott, while it is on my mind, are you able to take a freight train as heavily laden

between Keylargo and Key West as you are to take it from that point on the mainland up north to Jacksonville? Do your engineers allow that?

A. We call that either Detroit or Homestead either one or the other. Yes, we can carry as heavy a load on that work as we can carry on any part of the line. Of course on account of the fact that it is new construction we do not allow a heavy engine on it any more than we would on a green embankment; but at the same time we are moving the same weight of trains outside of the engine over those structures and embankments that we move on any part of the line.

Q. It is built on a basis so that it will stand that?

A. Unquestionably. It is only just a question of settlement, that is all. We do not use the lighter engine because we have any fear of the strength of the structure. We want to allow those embankments to settle, just as we would if they were building them anywhere. We want to allow time for settlement, and we do not put our heaviest engines on that work until we have run over it for a year or two.

Q. Before your line reached Key West, how were the commercial requirements at Key West met in the receipt of freight, from the northern part of the United States?

A. Up to 1896 they were met to Tampa and to New York by the Mallory line. In 1896 or thereabouts we established a steamboat line from Miami to Key West. The Tampa Line and the Mallory Line have continued operating into Key West; and in order to show you the value of our line into that section today, all the Key West and Havana mails, for instance, since January 22nd, have been going via our line and have been taken from the other lines. In other words, our mail business, by reason of that extension very largely, ought to be increased for the coming year, as my people estimate—and I think they are fairly within limits—by 75 per cent over last year. That is over the weighings of four years. We are

now weighing to ascertain what that line is worth, and I believe it is going to give the whole line at least 75 per cent increase in mail service over what we formerly had. When we started our operations into Key West they had in the summer time practically two trips a week from Tampa and one trip a week from New York through the Mallory Line touching at Key West and going to Galveston. At that time the Galveston rates prevailed at Key West. In other words the Key West people were paying practically the same as the Galveston people were paying for their rates both through Tampa and the Mallory Line. The rate has been reduced to meet the situation, by our lines coming in there, so as to give them a pro rata of mileage rate through to Galveston by those ship lines.

Q. From your calculations and expectations, are you able to carry that freight to Key West in competition with the ocean route?

A. So far as the line has been operated this year, I say yes, because a large part of that business comes out of the west. Take flour and grain and things of that kind, they come out of the west, and they have first a rail haul to New Orleans or Mobile, and that enables us to come into Key West practically with a lower rate than they can come in at, from that way. But our main dependency is out of the Panama Canal, which we had first supposed we were dealing with, but as the proposition has grown, it looks as though it was very largely out of the Island of Cuba. Two years ago the United Railroads exported from the Island of Cuba 690,000 tons of sugar. I do not remember exactly what our entire tonnage was, but it was somewhere in the vicinity of less than 400,000 with all of our increased volume. There is a chance for us to catch a part of that 690,000 pounds of freight with our freight car ferry, which we propose to employ in there.

Q. Where does that sugar mostly go?

A. It goes to the refineries of the east, very largely

to New York. Now we start there with an arbitrary in our favor of practically four dollars and ten cents. In other words it costs about 13 cents a bag, which is $2.60 a ton, to put that sugar in the bags. There is also practically $1.50 a ton for rehandling, which we save. In other words, we have $4.10 a ton to start with before we put a dollar's worth of freight on it, so far as the sugar is concerned. In other words, we expect to handle that sugar in cars, placed right at the sugar mills, without bagging and without rehandling. And as I say, we have in that practically an arbitrary to start with of $4.10 a ton.

The same is true of the tobacco products of the country.

These tobacco products are largely cured for rehandling. If they partially cure a bale of tobacco and send it out on a ship, they have no idea or knowledge of how that bale is going to arrive in the markets, whether on one side or the other; but the producer does know, when he sends that bale out of Cuba in a car, just how it is going to arrive. In other words, in curing, even after it is baled they lay it on one side for so many hours with a weight on it, and then turn it over on the other side for so many hours with a weight on it.

Q. How do you propose to get those cars returned from Cuba to Key West?

A. By car ferry.

Q. Is that perfectly feasible?

A. Perfectly feasible. The Ann Arbor Railroad and the Pennsylvania Railroad are running those car ferries with a maximum distance of 112 miles today. The Ann Arbor Railroad handled the second year of its operations 500,000 tons of pig iron in competition on the Great Lakes. Now they have just as heavy seas on the Great Lakes as we have in the waters between Key West and Havana, and it is just a question of building a ship that will take the cars properly locked, across that distance of practically 90 miles. I think the longest

distance that the Ann Arbor Road runs its car ferries is about 112 miles. One of the termini of the Pennsylvania Railroad is Ashtabula, and they seem to have developed a better system than the Ann Arbor people have. We have looked into those things very carefully, and just as soon as we can get to it, we are going to establish the system. We have, I do not know how many applications from people who want to establish themselves in Havana. There is a population of three or four hundred thousand people there in that one city. Now if you will take the products going in there, remember how much the packing house products mean. We have not only got the tobacco and the sugar for a possible volume of outbound business, not speaking of the vegetables and the fruits, but we have got a large possible volume of the packing house products going in, and the butter, eggs, meat, lard and everything of that kind go in there today under refrigeration. Now if you have to bring that suff to tidewater and transport in refrigeration, we all know that every time you transfer you subject the product to depreciation. Take butter out of ice and carry it warm and put it into ice again and you have absolutely destroyed the flavor of it.

Q. What is the economy of time that you would have in your favor between Havana and New York under your contemplated arrangement with the ferry, over the present method of shipment?

A. We might not be able to economize any considerable amount on the time, unless in carload movements. In the passenger business of course we would economize on that time, but we offer the facilities of preservation of the goods into the market. Take a refrigerator car, from Chicago, for instance, loaded with dressed meats, and we take it into Cuba without any transfer of refrigeration, without any transfer of the product. We do not take it out of the refrigeration at all, and we land it at the packing house in Havana without any depreciation.

Q. Is there much passenger traffic between Havana and American ports? Is that a significant factor?

A. It is a very considerable factor. There are a very considerable number of Americans in that island, and the passenger business is growing every year. They are a class of people who go back and forth, and they do not like to take a long ocean voyage if they can avoid it. They are looking all the time for rail connections wherever they can get them, and with proper facilities, that business is going to increase every year.

Q. You have no direct knowledge as to what proportion of the travel that came over your lines from Key West last month was made up of Cubans, have you?

A. No, we have no way of ascertaining that. I can tell you practically what the travel over that line amounts to. In 1910 the P. & O. Steamship Company handled 19,388 first-class passengers and 11,689 second-class between Havana and our ports.

MR. NEEDHAM: What ports do you mean?

A. Port Tampa, Knights Key and Key West. I think I have a report which shows the actual number to each port.

In 1910 we handled 3,000 passengers between Nassau and Miami, in 1911 2,700. So far this year, up to the end of February 1,500.

Between Knight's Key and Havana for the year ending June 30—I gave you that, 19,000, between both ports. We handled between Knight's Key and Havana 13,678. In 1911 we handled 15,095 between Knight's Key and Havana. In 1912 up to the end of January, or up to January 22, when we transferred our operations to Key West, we handled 4,649.

Between Knight's Key and Key West—that is simply Havana business, we handled 6,980 in 1910, and 7,442 in 1911, and for the period ending January 22—from July 1, 1911, to January 22, 1912, we handled 5,099.

Between Key West and Havana for the year ending June 30, 1910, we handled 5,393; in 1911, 10,941. From July 1 to December 1, 1911, we handled 3,514; in January, 1912, 3,378 and in February, 1912, 7,612. That was after we had begun our operations to Key West by rail.

JUDGE HUNT: You assumed those operations on January 24, did you not?

A. On the 22nd of January. In other words, with 13,000 in 1910 between Knight's Key and Havana, in a period of 31 days from the 22nd of January to the last day of February, of this year 1912 we handled 7,612 people.

MR. ST. CLAIR-ABRAMS: Your figures were 7,400 from Knight's Key to Havana, for the fiscal year ending June 30, 1911? Is that correct?

A. No, between Knight's Key and Havana for the fiscal year ending June 30, 1911, we handled 15,095.

Q. Up to January 22, 1912, how many did you handle from Knight's Key?

A. 4,694.

Q. Then from the 22nd of February?

A. From the 22nd of January to the end of February, 7,612.

Q. That was practically the height of your season, and the season was not over then?

A. No, March is a better month than February, and up to the middle of April, when we take our boats, is far better, better than February because the people are returning.

Q. Up to the last of February, adding the 4,649 to the 7,612, you had handled to Havana, 12,261 passengers?

A. Yes.

Q. As against the entire previous year ending June 30, 1911, of 15,195?

A. Yes.

Q. On the last of February then you were within

1,834 passengers of your entire traffic of the previous year?

A. Yes, sir.

Q. Go on, sir.

MR. NEEDHAM: Let me ask a question right there, because I think we can save time.

MR. ST. CLAIR-ABRAMS: Yes.

MR. NEEDHAM: The figures that you have given since the line was completed to Key West include all of the traffic from Havana to Key West?

A. Both ways, yes sir.

Q. Prior to that time your figures did not include any traffic from Havana to Key West?

A. Oh yes, it includes both ways, that is, the business between the two points.

Q. In the years which you have given?

A. It included the passengers that we handled between Key West and Havana.

JUDGE HUNT: The total number of passengers?

A. Yes, both ways.

MR. NEEDHAM: Out of Key West?

A. Between Havana and Key West, and Key West and Havana.

Q. You give those by years, do you?

A. Yes.

Q. I just wanted to be sure about that. The point I am after is this, to be sure that I am right: After the road was completed to Key West, you carried between Havana and Key West, traffic that had been going to Knight's Key previous to that time, and also the traffic between Key West and Havana?

A. Yes—no, that is not exactly correct.

Q. Just state it as it is.

A. It is not exactly correct because there are other movements between Knight's Key and Key West, locally, and I gave you that practically in my other figures. This movement that I am talking about now is between Key West and Havana, and Havana and Key West. It is true that that business probably went largely through Knight's Key before, but there

is other local business between Knight's Key and Havana, that is not included in the 7,600 that I gave you between Knight's Key and Havana, or between Key West and Havana.

Q. It included all the traffic after the 22nd of January?

A. It included all the traffic between Key West and Havana, but it did not include or take in any of the business which formerly went between Knight's Key and Key West. That all goes by rail.

Q. Of course.

A. Now before that—

Q. My point is this, that you had two lines up to the 22nd of January, one from Havana to Knight's Key, and the other from Havana to Key West, and you were carrying passengers by both of those lines?

A. Exactly.

Q. And for Key West locally?

A. And for through business.

Q. And for through business. Now the figures which you have given, say after the 22nd of February, are the combination of that situation?

A. It is just because the local business still goes in by rail. Formerly it went from Knight's Key to Key West.

Q. I am speaking of the business with Havana.

A. So far as Havana is concerned, yes.

Q. So far as Havana is concerned, you do not have any connection now between Knight's Key and Havana by water?

A. No. That was purely Havana business before. Between Knight's Key, we operated two lines there for three or four months in the winter time, and that was purely business between Knight's Key and Havana. In other words, we separate that.

Q. All the traffic from Havana to Knight's Key went over your rails further north; they did not stop at Knight's Key? There was nothing there?

A. Oh, no.

Q. But all of your traffic from Havana to Key West now does not necessarily go over your rails?

A. Oh, no.

Q. It is local as well as through?

A. It is local as well as through, that is true.

MR. ST. CLAIR-ABRAMS: Prior to this year how many trains a day did you operate between Miami and Knight's Key?

A. Two.

Q. One each way?

A. Two each way during the winter months, then after that, one.

Q. How many have you had to put on this year?

A. The same through service we had last year.

Q. What is the difference in the volume of passengers carried to Havana this year and those carried from Knight's Key last year?

A. That shows in the figures I have just given you. They speak for themselves.

Q. It is now much larger?

A. It is very much larger. For instance, we used to leave Miami years ago, before we had the Knight's Key extension, with forty, fifty, sixty, eighty or ninety passengers. Oh, an excursion we might run one hundred and fifty to one hundred and eighty. To-day these boats are leaving with from one hundred and seventy to two hundred and twenty-five to two hundred and forty passengers, both ways and six days a week. That service was three times a week before. That covers the increase of business.

Q. From Knight's Key did you have a daily run to Havana?

A. We did through the winter, but from Miami when we are operating out of Miami, we never operated but three times a week.

Q. Go on sir.

A. How far had I got?

JUDGE HUNT: You had got to the point where I interrupted you.

MR. ST. CLAIR-ABRAMS: You had got to that point where the Court commenced to ask you some questions as to the traffic. Now there is one question that the Court may not exactly understand. I should like you to explain the manner of transporting sugar at this time. It has to be put in sacks at the plantation?

MR. NEEDHAM: That has already been explained.

A. I think I explained that. I want to say to the court in reply to that inquiry a little further, that I have walked over almost every foot of this property, and I do not believe that there are any two thousand feet of this extension that offer just the same material. You take the character of the rock from Bahia Honda, practically through to what we call Land's End, which is Detroit, or near Homestead, and it makes a fairly good embankment, showing that that rock is not a part of the mainland, but it follows that line of Keys down the outer reef, as you know it, or Hawks Channel Reef. When you get to Bahia Honda you get a material there which is soft, which melts just like sugar. It is lime rock, just the same as the rock that we get at Miami, or in around that vicinity, and the moment you put it into water and begin to get the wash on it, it melts away like sugar, while the rocks above there will not do it. Yet you take the two rocks and analyze them, and there is a three per cent difference in them in pure phosphate of lime. So that we call one of them a limestone rock, and the other we call a coraline limestone, the coraline limestone being the harder or better rock. Take the sand and the marl, and you have the same differences practically. In places right in the bed of the ocean, under two feet of sand, we will find two feet of vegetable growth, peat, for two or three thousand feet right out in the bed of the ocean. Geologically I suppose that has a meaning. It means that probably at some time that end of the Key was connected with Florida; but those are the conditions that we were constantly running into in the construction of the line. Where we had that

peat, we had a different form of construction that we put in there. We could not use the material that we found in that particular locality. We had to move the material in there to make an embankment, wherever we had an embankment to make.

MR. ST. CLAIR-ABRAMS: In the matter of the passenger traffic from Key West, since you got in there, I find the statement that the passenger traffic for the last fiscal year was 2,807, or less than 2,900. For the month of February of this year from Key West—

A. Before you go into that, let me say that the larger part of this material that we have been working with was an unknown quantity when we began working with it. We had to determine what it would do by actual tests in the work. We would throw up an embankment, as we did across the Everglades, and leave it for a few months, to see what would happen to it. While we did that, we had no knowledge, and no one else had, of what the different classes of material would do in an embankment.

JUDGE HUNT: Is there nothing in railroad construction akin to that work, that has been tested anywhere in the world?

A. Nothing, I think, that I know anything about. Of course, generally speaking, concrete had been used by the railroads in what you might call highway bridges, or in docks and wharves and foundations, but not in the open sea with salt water. Nothing had been known of it, and as a proof of that, we have engineers from almost every country on the globe, coming to us for an examination of our work. Every piece of machinery that went into that work was devised by our engineers. Of course we had the basis; that is, we took what was used in ordinary highway bridges; but to show what that amounted to, I would refer to the cost of the work at the beginning, and the cost of work six months afterward. We could use the same machinery that they used in building highway bridges, but the cost of that work was something eleven dollars a foot for labor, that is, the labor

unit per foot for the first five months. At the end of the year the average cost of that work, for labor units, was less than four dollars, including what we had spent for the first five months, showing the education of the mechanic and the development of the machinery, because those were the factors that made that reduction. At the same time, taking the first arch that we put in on the Long Key viaduct in 1906, it took us 31 hours to put that arch in place. The last arch that we put in on the 31st of December we put in in eight hours, showing what we had accomplished in the way of education in twelve months.

MR. ST. CLAIR-ABRAMS: That was practically all original work then?

A. Yes, sir.

Q. You had no previous experience to guide you?

A. No, we had to learn it.

Q. Going back to the question of the amount of business, I find that in the month of February, 1911, your ticket sales at Knight's Key were, for your proportion, $2,689.85, while for the month of February, 1912, at Key West, your proportion of the ticket sales was $10,574.71, or four times as much as it was at Knight's Key. Did that increase meet or exceed your expectations after you got to Key West?

A. I cannot say that it exceeded my expectations, and I cannot say that I was satisfied with it. It is a very happy increase, that is all.

Q. 450 per cent?

A Yes. We all want more than we get.

Q. Oh, yes. Can you say whether you have any information as to the business doing in March there, whether it holds up?

A. Yes, I have on my desk a report of every steamer that goes out, every morning, and the business is holding up during the month of March, or was at the time I left, relatively with the month of February.

Q. Can you account for the loss of freight that is shown to exist this winter?

A. It is of course very largely in vegetables, and that leads me to make this statement, which comes out of my experience of many years in connection with this property and the handling of this class of freight. It is unfair to take any one particular month and compare it with the previous month or previous year. It is unfair to take any one particular year and say that that is a successful year, for the simple reason that we are dealing with an uncertain and unstable commodity. For instance, you take the steel industry. The steel industry usually pays a rate of interest upon its product based upon about an average of five years' product, so as to produce practically six per cent for the five years. In other words, in the five years they will have three good years and two bad years, and I do not know of any trade in the world that comes nearer that condition than the vegetable business and the fruit business. Because you have got a large crop this year you cannot say that you ought to base your rates upon that condition, because next year may be a bad year. Take our pineapples. In 1909 we produced over 1,100,000 packages. We have not produced much over or around six hundred thousand packages for any year since. The same is true of vegetables. Mr. Kirtland told you this morning that we will fall at least twenty-five per cent short this year as compared with last year. Now, in order to arrive at a fair conclusion upon which to base your rates you ought to take five continuous years, and see what the company has earned during that time. I have said a good many times that when we earn a certain amount by a large production in any particular year, if we could be satisfied the next year that we were going to do it, we would be more than glad to share it with the shipper and the employee, but you do not dare do it until you know what you have got in three or four or five successive years, because you are apt to get a slump, the whole business depends so largely upon climatic conditions.

Not only is that true of the freight, but it is true of the passengers. This year we have got probably as large a passenger business, if not larger, than we have ever had, and yet next year might produce a business that is less than this year; so that we have got, in fairness, to take the average of a period of years. Of course the growth and development of the country means something, and up to within the last two years we always considered that we were safe in making our preparations to meet conditions, on the basis that ten per cent would be a fair increase. Last year we came on with an increase practically in two months of 38 to 40 per cent. Now if we drop off from that this year 25 per cent, you can readily see that in the three years we will not get much more than the average of ten per cent increase. For instance, to meet this threatened coal strike to-day I am paying from one dollar to one dollar and fifty cents a ton on coke. It is not generally understood, but as a matter of fact we contribute from $1.80 to $2.05 a ton for every ton of coal that we put into the operations of our road, that no other road in the country has to pay, because we do not touch the coal lines. Every other line in the South that I know anything about touches the coal lines. We do not touch them. Therefore if they have any freight at all, they are charging it to themselves while earning it, while we have got to pay tribute to them from $1.80 to $2.05 a ton. When you come to deal with 140,000 tons of coal, that is expensive proposition.

Then bear in mind the climatic conditions surrounding each of our propositions, and you have got a situation that you do not usually find.

Q. What has been the policy of your road in regard to reductions on fruit and vegetables since you have been in control of the road?

A. We did not have any when I went in control of it, but with every rate that we have had, we have endeavored as far as possible to give our shippers and our employees, with ourselves, a fair share in any

improvement that we had. For instance, take our fertilizer rates. When I took charge of the operation of the property, our rate to Daytona on a ton of fertilizer was $2.56, a 110 mile haul. To-day it is $2.37, as I recall it, for a 366 mile haul. I think that is right.

MR. KIRTLAND: It is $2.32, I think.

A. That is lower than I thought it was. That has been our policy all along. From year to year we have made reductions in our fruit and vegetable rates.

MR. ST. CLAIR-ABRAMS: What I want to get at is this. Here is a reduction in 1902. Was that a voluntary reduction on the part of your road?

A. In 1902?

Q. Yes.

A. I think every reduction we have ever made was a voluntary reduction, except the pineapple reduction of 1910.

Q. Now state why you put in force that order of the Interstate Commerce Commission reducing the rate on pineapples, without contesting its legality or its reasonableness.

MR. NEEDHAM: Your Honor, I object to that. They put it in force. Just why they put it in force does not seem to me to be a vital question or a pertinent question in this case. I do not know what the answer will be at all, but it is wholly immaterial why they did it. They complied with the order. Why they complied with it I do not think can have any bearing or any materiality. It seems to me wholly irrelevant and immaterial.

MR. ST. CLAIR-ABRAMS: It is material because that reduction on pineapples and our putting it into force is made the basis for this attack on our vegetable and citrus rates, and I have here, and have requested my associates to have copied and certified by the Secretary of the Interstate Commerce Commission, every paper and document in which we object to the whole proceeding, protest against it and deny the

authority of the Interstate Commerce Commission to proceed with that very pineapple proposition, and we propose to offer the entire record in evidence. Therefore I want to show why we put it in force, while objecting. My objection is on record in the name of this company, from beginning to end, and a denial of the authority of the Interstate Commerce Commission.

JUDGE HUNT: Let him answer.

A. I suppose there are several reasons. The first one was that we are always for peace. We do not want to fight if we can avoid it. Then we had had a very large crop, and while we did not believe that the following year would produce a similarly large crop, we wanted to show due consideration to the belief of the Commission that it would produce it. The year following did show a very much less amount of freight. We did not want any reduction, but we wanted to carry out the orders of the Commission if it was possible, and we have always done that.

MR. ST. CLAIR-ABRAMS: Did the contention as to the competition with Cuba in any way affect your decision?

MR. ESTERLINE: I object to that as leading. The witness has answered fully.

JUDGE HUNT: That is not leading, to ask him whether competition affected his rate. He may answer.

A. None whatever, because I have always had the feeling that every time I went out after business that did not really belong to us, I was helping my own shippers. As a bald proposition it belongs to the shippers on the lines locally to support a line. The only business that we are justly and rightly entitled to is the local business on that line. Now if I can go out and get something which will help me there, it is bound to help them in the long run, not by giving them the same rate that I have got to give the other fellow in competition with somebody else, but by helping to reduce their rate ultimately. In other

words, this was not the only opportunity. We had made a fight in there years ago that cost us thousands of dollars, where we carried the stuff almost for nothing. It amounted to a war. We were dealing with people with whom the fruit and vegetable business was a mere incident. With us it was our life-blood. We had nothing else.

In order to bring our people on a parity with the Cuban peon we had to go out into the market and make that fight for them, and we had to put those people on notice that we were there and were going to be interested in that business, until they treated our people fairly, and we spent thousands of dollars in order to meet that competition. I suppose we must have carried some of that freight at that time for from a half to a third less than we carried it when the testimony was offered before the Interstate Commerce Commission, and we had it to do, in order to bring those people to understand that they had to make a rate that was the same as our rates.

Q. What people do you refer to?

A. I refer to the Illinois Central and the people working through New Orleans and Mobile into Chicago, very largely, but it was a matter of business.

Q. What was the result of that fight?

A. In other words, they did make their rates. I do not just remember the figures now, but they were 13 or 14 cents under our rates from our Jenson territory into Chicago. During the whole time we had agreement after agreement with them which they had continually broken, and it was only when we went in and met their reduction, and made them aware, I think, of what they would have to expect, that they finally came and made their rates so that they were equal practically to our Jenson rates, out of Cuba.

Q. Then you made your fight to fix a rate whereby your producers would have an equal chance with the Cuban shippers?

A. Yes, but we never could expect to carry a crate

of pineapples out of Cuba at the same rate that we charged our own people. In the first place, we have got competition. In the second place, it costs less money to handle it. We do not have to furnish the Cuban pineapple people with pick-up trains and side tracks and switching facilities, or anything like that. After loading their pines we handle them right straight from the car to the market.

Q. You are familiar with all parts of the line of your road, are you not?

A. Yes, sir.

Q. Are you pretty familiar with the population along the line?

A. Generally speaking, yes. Some parts of it get ahead of me some nights, when I do not look at them frequently.

Q. Is there much local traffic from the line of your road to the extension beyond it to Cuba?

A. I do not quite understand you.

Q. Is there much local traffic from the residents along the line?

A. Where? On our line for Cuba, do you mean?

Q. Cuba and Nassau.

A. I should say it was almost nothing. Of course there is some. We have local travel. For instance, a great deal of our Havana business comes through our Palm Beach and Miami hotels. The local travel is some. For instance, on the other side of the State, from our Tampa lines, we have a very large local traffic, between Tampa and Key West to Havana. That is a great deal of it second-class. You noticed in the figures I gave you that the second-class travel was very great. That is almost all on the other side. We do not have any of it. Mr. Kirtland stated this morning that it was not two per cent. Of course that is a pretty hard thing to say, but when you look at our general movement, by contact with the people, and you go through our ticket offices, you are bound to admit that there is almost nothing of it. It is very largely a foreign business. Even in the summer time

it is a through business. We operate through cars from New York to Key West, and if you get the reports on those through cars, they will pretty nearly fit into the reports of the steamers. I think that business will grow, however, as we begin to get further in contact with Cuba, as our people begin to do business with Cuba, and as we get in contact with them over this line. I believe that business is going to develop materially.

Q. Now, going to the question of the increases that have taken place on the line of your road since the 30th of June, 1911, will you have a statement made showing the increase in every branch of your employees, engineers, firemen, and so forth?

A. Yes, I will file a statement of that kind. It will have to come from the officers familiar with it. I only know in a general way that when each one of these questions comes up, for advancing pay, the matter comes to me, and after looking into it I simply say, "I think we had better do this." I know when the engineers asked for an advance, my first question was, "What does this mean to us? I think we are paying these people too much, but what can we do?" We realized that with the engineers coming to us right at the beginning of our busy season, we could not afford to make an issue with them. In other words, they had us. We also knew that the firemen stood back of them, and the machinists back of them, and the trainmen back of them. That is the labor organization, and we must strengthen ourselves with those people if we expected to make a stand with any of them. We did finally make a stand with the firemen and the hostlers, but they were comparatively small. But they made us a great deal of trouble.

Q. Did you not increase their pay?

A. We agreed to increase their wages, and we did; but after increasing the engineers, the trainmen and conductors were under a contract with us and I let the matter stand until the first of June, and I said to

our people, "It seems to me that under our agreement with those people, which we reached because we could not afford to make an advance for them when they asked us last June, it is only fair to them that we treat them just as we have treated these engineers." My recollection now would be that it would have amounted practically to a 20 per cent increase. When we came to the other employees, it seemed to me that it was not fair to advance only those people who had forced us, that we ought to give some consideration to those people who had not forced us, and we made advances to our clerks, and to the men in the shops, for the same reason. We advanced the wages of the firemen, but we could not accede to their demands, because they were mixing up with the engineers. It was an expensive proposition to us, but there was nothing else to do. It simply showed what it would have cost us if we had gone into a war with either the Brotherhood of Locomotive Engineers or the Brotherhood of Trainmen. In other words, we spent $45,000 in the month on January—as you will see, our expenses increased in that month—to meet the situation. We had our road covered with United States marshals. We had to do it in order to protect the property. They were shooting into our trains, and ditching our trains and that sort of thing, but in the end they gave way, and now we have the nigger firemen, as we call them. Some people call them colored. We have colored firemen down there instead of white firemen, and I would rather have them too, even if I could always get white men, because the colored fireman is as a rule the highest order of a colored man, while the white fireman as a rule is not of the highest order. There are good ones among them, of course.

Q. These increases of salary that you had to make in December, were they just for temporary purposes, or were those increases required to be made regularly?

A. They are there to stay, until—

Q. Until another one is demanded?

A. Yes. In other words, the whole thing moves in a cycle as far as the labor unions are concerned. It is only just a question how often those cycles will move around, before they get all we have got. As soon as they get through in one department, it means that they come back again and again. Please make a memorandum of what you want me to furnish, and I will do it.

Q. Kindly get a statement made and file it, of the advances of wages to each branch of your employees, and show the aggregate annual increase that those advances impose on the company.

MR. NEEDHAM: I should like to supplement that by saying that we should like to have it show the percentage of increase or something that would enable us—

A. We will show you what the wages were before, and what they are now.

Q. Mr. Esterline suggests that it show also the increase in the number of employees of each class.

A. All right.

Q. At the beginning of the year 1911 and the year 1912?

A. Put that on your memorandum—the increase in the number.

MR. ST. CLAIR-ABRAMS: Of course if you had any increases for any special work, the increase for that special work would be shown?

A. In the case of the engineers, it is all a question of mileage. If there is 90 miles added, it shows in the mileage.

Q. This year you have had about forty odd miles increase?

A. Yes, 43 to 45 miles.

Q. It has been charged to this court that this railroad was part of a scheme to enable hotels to be supplied with guests, in other words, that the railroad was built for the hotels. I wish you would state to the Court what the fact is in that matter.

A. I should say that just the contrary of that proposition is true. In going into that country in the beginning there was almost no business in sight, and the hotels were built for the purpose of making business. We have spent somewhere between $11,000,000 and $12,000,000 on our hotels, outside of what we have spent in the other proposition. That does not come into the other proposition at all, and we have rarely ever made more than one and one-half per cent on that investment, so far as the hotels were concerned. At the present time, for instance, we are carrying our own insurance on those hotels. The road could not for a great many years have afforded to carry passengers at ten cents a mile if it had had to depend upon the local travel; but that business in the winter time helps our passenger business, and in my opinion it has been one of the greatest advertisers that the line could possibly have had, because we have brought that class of people onto the line who have gone back home with the ability to tell people something of the possibilities of the country. In addition to that it has developed other hotels outside of ours. My recollection would be now that the last report that we had, made some three years ago, showed 145 hotels, with a capacity of from 50 up to 400 people, on the line of the road, outside of our own, and we have 10. We have something over three thousand rooms in the ten houses—nearly four thousand rooms in the ten houses. That business of course in the hotels is a variable one, depending upon the climatic conditions here, as well as the fruits and vegetables depend upon the climatic conditions, and we never know what the business is going to be until we get through with it, and we have got to be prepared to meet it, both the railroads and the hotels.

Q. Remove those hotels now, and what effect would it have upon your road?

A. It would cut into our passenger business very materially, because not only would we lose what we could not take care of, but it would be the means of

keeping away a great many people who would go by reason of that influence. It is very hard to tell what the effect would be of the destruction of our houses. It is not exactly as though the hotels were confined to being filled up, because it is a continually moving proposition; and as I said to some of our people the other day in discussing the question of taking off the train service, you must not look at your through trains altogether by what appears on the surface with reference to them, but you must remember that your local business is being helped very materially by having those people live there. The longer we can keep them, the more local travel they will make. So that they have increased our business more than would appear on the surface. That is, if a man comes from Jacksonville to Palm Beach and pays $9 or to Miami and pays $11, that is not all you get out of him, because that man moves up and down the line. He may go back to Hobe Sound or Del Ray. He may go to Miami half a dozen times during the winter. We have got them, and we must consider them as a moving population.

Q. Can you state approximately how much freight your hotel company pays the East Coast annually?

A. No, sir, I cannot.

Q. You have never investigated that?

A. I have, but it has escaped my memory. I do know from year to year just exactly what we pay, but I could not recall those figures at the present time. I know as a matter of fact that we pay one meat house in Jacksonville $160,000 a year for beef and meats, but I cannot tell you what the freight on it is.

Q. Your company pays the freight, like everybody else?

A. Yes, the hotel company pays freight, just the same as anybody else, and the same freight rate.

Q. In the matter of the travel over the extension—

A. We also paid them for every stick of timber

that went into the construction of those hotels, paid the usual freight rates.

Q. In the matter of the travel, have you had occasion to ascertain the amount of travel during the winter on what is called the Palm Beach Limited?

A. I can only state generally that that train is a fast train, a parlor car train, and last year our Pullman and parlor cars earned $7,500 a car, and it is considered to be, for the period operated, the best paying train in the United States. It beats even the Congressional Limited so far as the earnings are concerned, and it is entirely a hotel train. It is considered by the Pullman people and by ourselves as being the best train in the United States as far as earning capacity is concerned. If you take the past three months, during the period that we operated it, and take the best three months of the Congressional Limited, that train beats the Congressional Limited between here and New York.

Q. Does that train run the entire length of your road?

A. It runs to Miami, Jacksonville to Miami, and return.

JUDGE HUNT: Is it approximately the same distance as from New York to Washington?

A. No, it is a little further. It is 366 miles, as against 223 miles, I think, from here to New York.

MR. NEEDHAM: 225 miles from here to New York.

MR. ST. CLAIR-ABRAMS: Your trains, all of them run to Miami, and then run through Miami to Key West?

A. To Key West, yes, sir.

Q. I mean, it is a separate and distinct service, is it not?

A. Yes, that is a divisional point.

Q. That is what I want to get at.

A. Yes.

Q. Have you a copy of that act of 1905?

A. No, I have not.

Q. Have you that, Mr. Needham?

MR. NEEDHAM: I have a copy of the act. Mr. Parrott suggests that you might take those leaves right out. This is the act of 1905.

MR. ST. CLAIR-ABRAMS: I suppose there were a hundred charters to Key West before that time. We agree that the general statutes of the State of Florida authorize every railroad company to use steamships or steamboats, or water transportation in connection with the railroad.

JUDGE HUNT: You do not have to agree to that, because it is the law.

MR. ST. CLAIR-ABRAMS: That is the law.

MR. NEEDHAM: Whatever the law is, we will submit to it. It is not necessary to prove it. It can be used.

MR. ST. CLAIR-ABRAMS: You may go on, Mr. Parrott, with anything further you wish to say, or I will go to something else. Is there any other fact in regard to the extension, which you desire to place before the Court?

A. I do not think of anything.

Q. Then I will take up another matter.

A. I might say this, that it is their business to tell just what that hotel proposition is worth to the railroad. We have never had anything but just a casual estimate made of the amount of business that it means to us; but roughly speaking, it must bring us between 200,000 and 300,000 people a year to the different hotels.

Q. Annually?

A. Annually. That is measured to some extent by the tonnage, and to some extent by the per capita, that we get at the hotels.

Q. You may cross-examine.

Cross-examination.

MR. ESTERLINE: Mr. Parrott, at the beginning of your testimony the other day you referred to the

Jacksonville Terminal Company at Jacksonville. That is a corporation, is it not?

A. Yes, sir.

Q. Do you know under what State it is organized?

A. Florida.

Q. For the purpose of owning and operating a terminal at Jacksonville?

A. Yes, sir.

Q. It has about 27 miles of road or terminals that it operates there, has it not?

A. I think we have about 22 miles of track there.

Q. Your tracks are operated for what lines?

A. The Atlantic Coast Line, the Seaboard, the Southern, Florida Southern and the Florida East Coast.

Q. And they jointly use the terminal?

A. Yes.

Q. The terminal does the shifting?

A. Of passenger trains. It is a passenger station. We do not do any freight service there at all.

Q. Of course, being a corporation, it has its capital stock and its officers. Do you know who the officers of that company are?

A. I do.

Q. Who are they—representatives from each one of the lines?

A. T. M. Emerson is president. I am vice-president. Mr. Sawyer is secretary. Mr. Emerson and Mr. Kenley are directors for the Atlantic Coast Line. Mr. Hicks, and I do not remember who the other man is—

Q. Each company has two?

A. Yes, except the Georgia Southern and Florida Southern. They represent one interest, and therefore they have only one representative on the Board.

Q. They have their own separate and distinct officers, have they?

A. Yes, sir.

Q. And run their business separately?

A. Yes, sir.

Q. And collect from these various companies according to their wheelage basis?

A. According to our cars.

Q. And they pay their own expenses, and distribute their earnings?

A. Distribute their earnings among their owners. That is, the expenses are charged out on the basis of cars, while the fixed charges are charged out, and improvements or betterments, or anything added to the property, are charged out on the basis of ownership.

Q. The terminal company owns property that is operated?

A. Yes, sir.

Q. Now take the Peninsular & Occidental Steamship Company, is that the name of it?

A. Yes. You have got it in the guide. You are more apt to be correct than I am, because I do not remember whether it is occidental or oriental. It is P. & O. That is all I recall of it.

Q. That is a separate and distinct corporation, is it not?

A. Yes, sir.

Q. Organized under the laws of what State?

A. Kentucky.

Q. I assume that it is organized for the purpose of owning and operating a steamship company. You have not got the charter here?

A. No, sir.

Q. You are the president of that company?

A. Yes, sir.

Q. Where is its headquarters?

A. New Haven.

Q. New Haven, Connecticut?

A. Yes, sir.

Q. With the exception of yourself, is there any other person connected with the Florida East Coast who is an officer or director, or otherwise connected with it?

A. Mr. Flagler is a director.

Q. Anybody else?
A. No, sir.
Q. It has its own treasurer and vice-president?
A. Yes, sir.
Q. Treasurer, auditor, manager and so on?
A. Yes, sir.
Q. I think that that shows that it operates from Miami to Nassau.
A. Do you want to know where it operates?
Q. Yes, generally.
A. Miami to Nassau, Key West to Havana, Tampa, Key West and Havana.
Q. It receives and disburses its own earnings, I assume?
A. Yes, sir.
Q. In the regular way?
A. Yes, sir.
Q. And aside from the office that you hold, it is not connected in any way, and you being the president of each company, that is the only connection it has directly with the Florida East Coast?
A. Only we are always looking out for our earnings in that property, if there are any. Owning that asset, we do not let it get away with us.
Q. I mean, it being separate in itself, it pays its own claims, and runs its own business. That is correct, is it?
A. Yes, sir.
Q. Now, as to the rate of interest, to which Major St. Clair-Abrams referred, 8 per cent is the maximum rate which you or anybody is allowed to charge on loans in the State of Florida, is it?
A. That is the legal rate. My recollection is that you can make a contract up to ten per cent.
MR. ST. CLAIR-ABRAMS: You can charge ten per cent by contract?
A. You can charge ten per cent by contract, but the regular legal rate if nothing is said in the contract is eight per cent.

MR. ESTERLINE: But by contract you could make any rate of interest?

A. You can make it up to ten per cent by agreement.

Q. Or any less rate you chose?

A. Yes, sir.

Q. You are connected with a bank yourself, the Florida National?

A. Yes, sir.

Q. That bank loans money at different rates of interest, from eight per cent, and lower rates of interest?

A. Yes, not lower than six per cent, however.

Q. But I assume there are loans in the State of Florida for less than 6 per cent?

A. I know of a few loans on high class security, like large buildings, at five per cent.

Q. The rate of interest ordinarily on railroad stocks and bonds is at less than eight per cent, is it not?

A. Yes, on bonds it runs from four to five and six per cent.

Q. So your rate on the stocks and bonds of your company is not different from the ordinary rates prevailing on railroads?

A. No, sir, just about the same. We make them as low as we can, and get as near par for them.

Q. I understood you to say this morning that in the construction of the over-sea extension, so far as you were concerned it was a business proposition?

A. Yes, sir.

Q. You also stated, I think, that so far as Mr. Flagler was concerned, you did not know what he might have had in his mind?

A. Well, I do not know what might have been in his mind, but I do know that so far as my relations to the contract and to him were concerned, it was a business proposition.

Q. It is pretty generally understood and accepted

by all of you that the building of that over-sea extension was a very great and colossal enterprise?

A. That is a pretty hard question to ask me, because I hardly think it would be modest for me to answer it that way.

Q. I will put it in another way. Our attention has been called to a little circular, a little booklet, which bears the title or announcement "Key West Extension of the Florida East Coast Railway, open January 22, 1912." You are familiar with that pamphlet?

A. I have read it, yes.

Q. You were familiar with it before it was issued, were you not?

A. Yes, I saw it before it was issued.

Q. You probably conferred about it and knew what it contained at the time?

A. Yes, sir.

Q. Your photograph constitutes a part of it?

A. I think my picture is in there. It is the only book you will find it in. I have not been in the habit of publishing it.

Q. Mr. Flagler's picture is also a part of this little booklet?

A. Yes, sir.

Q. I want to call your attention to this book, which was issued by the Florida East Coast Railroad to the public. That is correct, is it not?

A. Yes, sir.

Q. Published at its expense, and by its authority?

A. Yes, by the railway.

Q. I call your attention to the following excerpt: "When the great industry he had fostered from its infancy had extended its enlightening forces to the world's ends, and trained specialists cared for and watched over its details, at sixty Mr. Flagler might have settled into a life of luxury and 'well-earned rest,' had it not been for that love of building and creating which was his natural endowment and inspiration."

The reason I am referring to this, Mr. Parrott, is to show that there was something of sentiment and inspiration about this enterprise, an undertaking separate and apart from and more than the mere business phase of it. You know of these expressions in this pamphlet?

A. I read them as they were offered to me, yes, sir, and it is all true, is it not?

Q. I am not questioning the truth or falsity of it at all. I am calling attention to the fact that it was a great enterprise, separately and apart from the mere business phase of it. I quote further:

"In the light of this, though the Key West Extension amazes and astonishes us, we see the underlying secret of its successful completion. To this crowning work of his life, Mr. Flagler has given an unflinching faith, an unswerving determination, the enthusiasm of his wisest years, and a princely fortune. Again and again the elemental forces of the tropics has struck at his work with the vibrating anger of the hurricane, with threatened ruin in its wake.

"Again and again the man with the silent resolution to succeed has gone on out-witting nature, mastering men, marshaling world force against world force."

There was a good deal of sentiment and inspiration in that, would there not be?

A. You asked me if I did not think it was a great and colossal undertaking. I told you that from my connection with the proposition it would hardly be necessary for me to say anything about it. All that does not take away one jot from the fact that it was a business proposition.

Q. No, I did not say it would.

A. But if that thing had been alone, it would not have been done, if we had not seen clearly that we could make that thing a permanency—it could not be a permanency unless it made a return on the

money—Mr. Flagler might be willing to operate it, but his heirs, no.

Q. All I want to do is to develop in a way something of that side of it.

A. I do not think that influenced the proposition at all, until we had determined that the business side of it was a paying proposition. Mr. Flagler has never done anything in his life, so far as I have known him, that he did not ask himself the question if somebody else would not have done it, if he had not. That is what he has done with his money. Not only in this, but every dollar he has spent from Jacksonville to Key West, has been based on that: "Would anybody else have done this? Will I be in competition with somebody else?" That has been the ruling spirit of every dollar that he has invested in that country, over $50,000,000 of it.

Q. All I want is to develop that side of the enterprise.

A. I say a man would be stupid if he did not feel proud that he had been connected with that proposition.

Q. There is no question about that.

A. When you ask me if it was not a great and colossal work, I never thought of it as a great and colossal work, because I did not dare think of it, until it was done.

Q. I read further:

"Now that the work of the Key West extension is completed and the most unique railway in the world in actual operation, a new wreath has been won by modern enterprise and skill. The world wondered at tunnels which pierced mountains and passed under rivers; at spiral windings which topped the passes of the Sierras; at miles of track which carry life across and into deserts, and now a new wonder is added, to which the world may come with praise and admiration, not only for the work done but for the faith and courage which dared to undertake it. Land and sea are both laid under tribute; wind and

storm have both been beaten; 'The Martyrs have been bound and chained by man at last and man's enterprise and skill have brought the throb of life, the thrill of human commerce to these islands, which slept like lazy lizards through the summers of uncounted centuries, as they hear the voice of progress repeat the cry of Peter Martyr: 'To the south, to the south.' "

I do not want to put in much of this, but just refer to one or two other excerpts:

"As the work approaches completion, to one who was familiar with the territory covered by 'The Extension,' the finished work, though real as life itself, seems like the structure of a dream. That it is accomplished seems incredible to one who sailed that stretch of sweeping sea now dominated and beautified by the matchless lines and mighty proportions of the Long Key Viaduct. This viaduct alone is a monument to a whole lifetime of constructive skill and enterprise. It will endure throughout the ages. Its sweeping arches will gleam in the sunshine of centuries."

A. All of which is true, but none of which takes away the fact that the business proposition lay in back of it.

Q. That might remain to be seen?

A. Of course.

Q. I do not want to go into that. I prefer not to go into that, because I say I merely wanted to develop this side of it, and I trust you understand that is the point in my offering it. I have no other purpose. I quote again:

"True enough, the problems were complex, the labor colossal, the dangers great, the estimated cost tremendous. Entirely new phases in construction and management had to be met. Meteorologic conditions of an absolutely unique character had to be anticipated and conquered. In a word, no graver situation ever presented itself than that in this suggested railway which would defy the Atlantic and the Gulf, the rush of current, and the sweep of storm."

MR. ST. CLAIR-ABRAMS: Why don't you put it all in?

MR. ESTERLINE: There is too much of it. A great deal of it has been gone over. I merely want to call attention to the fact that there was that side of the construction, to which references have not been made. Now, Mr. Parrott, did the handling of the cars from the north into southern Florida, and the loading of the cars, and the handling and shipping of the citrus fruits, vegetables and pineapples from southern Florida to the north, in any manner enter into the consideration which resulted in the construction of the over-sea extension.

MR. ST. CLAIR-ABRAMS: We object, if the Court please. It is a piece of absurdity for counsel to pick out one portion of a road, which may have its great value in one part, and then exclude another because it does not bear upon that. An illustration of that is to be found in the fact that for many miles, almost absolutely consecutively, the citrus growers might object to this road, on the ground that they are not raising any vegetables for 105 miles. For 105 consecutive miles, where the most of the citrus fruit grows, there are only 16,000 crates of vegetables produced, out of two million and a half crates of vegetables raised on the line. The citrus fruit growers might as well come in and say "Here, we object to these rates. We do not raise any vegetables."

JUDGE HUNT: It might be said that there was a sentimental side to the building of this road. All the great railroad builders who went into the northwest, where I lived all my life—certainly Mr. Hill, a great railroad constructor—had a part in the achievement of carrying those railroads into what was a wilderness. The ultimate question, though, is whether or not back of it and accompanying it was this business feature of it that Mr. Parrott speaks of it. I suppose a great engineer who constructs a bridge across a river, that enables the railroad to cross it, takes a sentimental side in his work. Eads

took a great amount of interest in the jetties that he constructed at the mouth of the Mississippi River. Every one of these great enterprises entitled its projector to take pride in it. It seems to me that is a minor element unless you can show as a business proposition that it never had any justification at all. That would be the way I would look at it, at any rate. We have wasted an hour in getting these rhetorical sentences into this record—beautiful descriptions of the topography of the country.

A. Purely a matter of advertisement.

JUDGE HUNT: That is the way it strikes me.

MR. ESTERLINE: I have passed over that.

JUDGE HUNT: Now you are getting right at the very point that is competent, whether or not there was a business side of it.

MR. ESTERLINE: Yes. I merely wanted to call attention to that in passing.

MR. ST. CLAIR-ABRAMS: I do not think the question put by Mr. Esterline is a fair one.

JUDGE HUNT: You are just filling up the record. I am going to allow the question.

MR. ST. CLAIR-ABRAMS: Go ahead and answer the question.

MR. PARROTT: What was the question?

(The stenographer read the question as follows:)

"Now, Mr. Parrott, did the handling of the cars from the north into southern Florida and the loading of the cars and the handling and the shipping of the citrus fruits, vegetables and pineapples from southern Florida to the north in any manner enter into the consideration which resulted in the construction of the over-sea extension?"

A. No, we did not consider the business of the line at all. We were considering simply what that line would bring out.

MR. ESTERLINE: Then the handling of these citrus fruits, pineapples, and vegetables, would have gone on just the same?

A. Yes, sir.

Q. And the construction of that extension had, and has now nothing whatever to do with the handling and shipping of the citrus fruits and pineapples to the north.

A. Only in this, as I remarked this morning, that every time we begin to do a ton of business that we do not now get, it makes it possible for us to give a further consideration to all of its products, and to the passenger travel on our old lines.

Q. I will put it this way: If the over-sea extension should unfortunately, by hurricane or otherwise, become damaged or put out of use, either temporarily or permanently, that would not affect the handling of the citrus fruits and pineapples?

A. It would not affect the handling of them, no sir.

Q. From southern Florida to the north.

A. No, sir.

Q. That is all.

A. I want to say here that there are one or two elements in the business of that line that go very far toward proving the value of it as a freight producer. The island in the beginning as I stated earlier in my testimony was only a small part of our consideration. We are looking toward Panama, being brought, as we would be, by the extension, so much nearer Panama and the west coast of South America.

JUDGE HUNT: What is the distance?

A. Mr. Kirtland, can you give the exact figures?

MR. KIRTLAND: I have the figures exactly. It is about 1,690 miles. I will not be sure that that is exactly correct. It is about 300 miles nearer than New Orleans.

JUDGE HUNT: Does Panama lie east or west of Key West?

MR. KIRTLAND: It is almost directly south.

MR. PARROTT: A line cut right through Cuba, going straight south, would hit it.

JUDGE HUNT: Panama?

A. Yes. You have got to travel out of your way a hundred miles to get around the western end of the

island, but a canal cut through that narrow part of Cuba, right into that narrow bay that surrounds the Isle of Pines would be a due line south.

MR. ESTERLINE: Are you able to state about when you determined upon the date for the opening of the extension?

A. When we determined upon it?

Q. Yes.

A. Last May. There are over two million tons of freight, either that has been exported, or would be exported with proper facilities, in the Island of Cuba to-day. There is that amount to be exported. I am not talking about the inbound freights at all; and when you consider our tonnage, that is a tremendous proposition for us. There is a half million tons of sugar that is practically going to waste, very little of it being shipped. The molasses or the sweetening that comes out of the sugar could be taken care of by the distilleries in other sections of this country. That is an added fact that I did not think of in discussing this, this morning. We are aiming to have a conference now with the United Railroads with reference to this car ferry proposition. They are just as enthusiastic about it as we are, and they are remodeling what is known as the Arsenal property in Havana, building their docks there, and in their plants have their car ferry slips prepared for this undertaking.

Q. That is all from me.

MR. NEEDHAM: Mr. Parrott, I want to call your attention to some items in this Exhibit filed by Mr. Chambers. You testified on your direct examination that the purchase of the A. & W. Railroad at $100,000 was a purchase at less than it would cost.

A. Less than what it would cost to build it.

Q. At that time?

A. Yes, sir.

Q. Do you know the condition in which it was at that time? Were you connected with the road then?

A. Yes, sir.

Q. Do you know the condition that it was in?

A. Yes, I was interested in that purchase. I suppose we spent somewhere about $40,000 or $50,000 in ties and reconstructing it. I do not see the figures, but going back fifteen or eighteen years ago we spent about that amount in ties and in reconstructiing it.

Q. Is it not a fact that there are items in this account which show the betterments that were made to that road, which have gone into the general property account?

A. ——.

Q. It does appear in this statement?

A. Just as there are in each one of these properties from time to time. As we bettered them, they have gone into the accounts.

Q. So that its present condition represents the original cost and the betterments which are noted in this property account?

A. Yes, sir.

Q. I call your attention now to the items of the steamboats, in 1897. Are those the steamboats that were used upon the rivers and afterwards sold?

A. Yes, sir.

Q. That is the purchase price, $33,000, is it not?

A. I should say it was. Let me see. I should say that that probably contained some betterments, because those boats did not cost that—for instance, I do not think the Sweeney cost us over $5,000, and I assume that that amount being as large as it was, we did some rebuilding and added some betterments to the boat.

Q. You did rebuild?

A. Yes. I remember it practically cost us as much to rebuild her as we paid for her.

Q. That represents then the total cost for the three steamers that went into the property account?

A. Yes.

Q. Those were afterwards sold. Do you remember what they brought?

A. No, sir, I do not. The St. Lucie was not sold.

She was transferred to the extension, and was destroyed in one of those storms. We still have the Sweeney. The Courtney was sold.

Q. Do you remember what they were sold at?

A. No, sir. The Courtney was the only one we ever sold. The Sweeney is known as the Biscayne. We changed her name. She is in the construction service on the extension.

Q. Do you remember what the Courtney sold for?

A. I do not; I should think probably $2,500 or something of that kind, but I do not recall.

Q. The difference then between what you realized on those boats, and what you paid for them still remains in the property account. It never has been taken out?

A. It never has been taken out?

Q. By way of obsolescence or depreciation?

A. No, sir. Ultimately these two boats are to be charged to the extension account, the St. Lucie and the Sweeney ought to be charged ultimately to the cost of the extension, because they have been used there for three or four years.

Q. I call your attention to the items under the date of 1903, June 30, net earnings put into the plant, $580,573.34. Will you state just what that represents?

A. It represents engines, cars, and other betterments that we have taken out of earnings up to that time, from, I should say, 1894 up to the time that entry was made in 1903.

Q. How did you arrive at it?

A. We took it right out of the books. We had spent it. It showed on the books that we had spent that amount, $580,000, for betterments, for equipment, and for other undertakings.

Q. Did this include equipment?

A. Whatever we have spent for equipment out of earnings. Anything we had spent out of earnings practically, was in that $580,000.

Q. And that represents the betterments up to that date, for the time specified in this account?

A. It represents betterments that were taken out of earnings. It does not represent all the betterments, because during that time we were borrowing money and paying more.

Q. I mean just what it states, that this represents up to that date all the betterments which have been made and paid for out of net earnings?

A. Yes, sir.

Q. Including some equipment?

A. Yes, sir.

Q. The next item, to interest on capital stock, $275,000, what does that represent?

A. That represents five per cent on $1,000,000 for five years.

Q. Does it represent any cash?

A. No, sir, not a dollar, except as we are regarding it as fair adjustment of the purchase of the first bonds.

Q. Which bonds do you mean by the first bonds—the old issue?

A. Yes, the $7,259,000.

Q. Adjustment between whom?

A. Mr. Flagler.

Q. He received nothing from this, did he?

A. He gets the credit for it. He gets the credit for all those items on this new purchase of bonds. In other words all those items went together for the $3,000,000. There was $1,500,000 or thereabouts that we owed him in cash.

Q. For what?

A. For advances that he had made to us from time to time.

Q. Do these advances appear in the accounts?

A. Yes, sir.

Q. And where are they entered?

A. At that time we had a floating indebtedness. It was practically our floating indebtedness, and he was practically the only person that we ever borrowed from, and we owed him about $1,500,000.

Q. Did that appear in your account for 1903?

A. It should, yes, sir.

Q. Your annual account?

A. Yes, sir. I do not keep track of those books, but it should appear there.

Q. It would show then that you have a floating indebtedness of about $1,500,000?

A. I should say so, yes, sir.

Q. And that is represented by what in this account?

A. That is represented by the balance after taking $580,000 and $275,000, and the $546,000, it is represented in the balance of that $3,000,000. The $546,000 was advances that he had made.

Q. That has been taken up in another way. It does not appear in this.

A. Yes, but he got the credit for it on those bonds at the time. It was part of the money that we owed him.

Q. Was that for advances not represented by the bonds themselves?

A. Oh, yes, advances not represented by the bonds at all.

Q. Pure floating indebtedness?

A. Pure floating indebtedness.

Q. How long has that been running?

A. Since 1896.

Q. There was no payment of money to Mr. Flagler at that time?

A. Well, no; no cash.

Q. At the time the $275,000 was credited here?

A. No, he just took his pay in bonds.

Q. The item of loss on sale of bonds, $3,000,000, was there any cash represented in that item?

A. No, that was pure discount. We gave him the bonds at 50 cents on the dollar. He got $6,000,000 of bonds for $3,000,000.

Q. Your issue was that?

A. The second mortgage, the issue of 1903, I think it was.

Q. Is that the second mortgage?

A. That is the second mortgage of $13,000,000, of which $6,000,000 only was issued.

Q. What became of those bonds?

A. They were destroyed.

Q. The $6,000,000 were destroyed?

A. Yes, they were turned in and destroyed. When we issued the last bonds, the mortgage was cancelled.

Q. Which ones took the place of those bonds?

A. It would hardly be fair to say that either of them took the place, because the relations were different.

Q. Which issue?

A. We had $7,259,000, and $6,000,000 outstanding. Both of those series were taken up, and in 1909 two mortgages were substituted in their place.

JUDGE HUNT: The 1903 issue?

A. Yes, the 1903 and the 1896 were both cancelled.

MR. NEEDHAM: Did not your 1903 take up the 1896?

A. No, sir, they were both outstanding.

Q. Your last issue of 1909 funded both?

A. Yes, funded the entire funded debt and the floating debt practically.

Q. Who held the $7,000,000 bonds that you refer to?

A. Mr. Flagler.

Q. And he also held the $6,000,000?

A. We could not sell them.

Q. For which you gave him a discount of $3,000,000?

A. Yes.

Q. When you funded those bonds, how were they traded—when you issued the last bonds?

A. We just took debt for debt. We cancelled those bonds, and the $10,000,000 were sold to Mr. Morgan. Mr. Flagler took the $20,000,000 of the second mortgage bonds, the income bonds, as we call them, in lieu of the $13,000,000 that he had had

under the two previous mortgages, and $7,000,000 additional indebtedness we owed him.

Q. Then he took those, bond for bond?

A. No, sir, because they would not quite go around. He had to put up some cash. We owed him some money, and he took them up too. He took them dollar for dollar. That is, in other words, he took $20,000,000 of bonds for $13,000,000 of the old bonds, and for practically $7,000,000 in round numbers, additional indebtedness we owed to him. We had at that time, my recollection would be, something around $8,000,000 or $9,000,000 that we owed him.

JUDGE HUNT: Not to interrupt the examination—

MR. NEEDHAM: Go ahead.

JUDGE HUNT: How did that indebtedness accrue, generally, in its main features?

A. There was nearly $4,000,000 that came from betterments of the old line.

JUDGE HUNT: Had it been an outstanding indebtedness at the time of the issue of 1903?

A. Oh, no, we cleared up everything in 1903.

MR. NEEDHAM: It had accrued between 1903 and 1909?

A. In making the betterments and improvements, we had spent nearly $4,000,000.

Q. Those were sums of cash advanced by Mr. Flagler to enable you to make those betterments and improvements?

A. Yes, sir.

Q. So that there stood this cash item at the time of the funding, of approximately how many million dollars?

A. I should say $8,000,000 or $9,000,000. Part of it was an extension, but a little less than $4,000,000 was the floating indebtedness.

Q. Then you sold your first mortgage bonds to Mr. Morgan?

A. Yes, sir.

Q. And your second mortgage bonds were taken up by Mr. Flagler?

A. For our indebtedness to him.

Q. And the payment of some cash?

A. That was a part of the indebtedness.

Q. Does Mr. Morgan still own the $10,000,000 bonds?

A. I do not know, sir. I think he does. I think he has been trying to sell some of them back to us, lately. I think he has got them yet.

Q. Coming back to the $5,000,000 issue, as I understand you now you say that Mr. Flagler turned in the $6,000,000 of the second mortgage bonds?

A. Yes, sir.

Q. And the $7,000,000 and odd of the first mortgage bonds, making a little over $13,000,000 in bonds?

A. Yes, sir.

Q. And the balance of the $20,000,000 of income bonds was represented in a floating indebtedness which you owed him at that time?

A. Yes, sir, and that reduced our floating indebtedness to him. It was more than that, because right about then or soon afterward he took $2,000,000 more stock. In 1907-1908 and 1909 we were indebted to him about $11,000,000 for the Key West extension, and that, with the floating indebtedness, made our entire indebtedness to him. But in addition to taking the $20,000,000, he took $2,000,000 more of stock.

Q. That was to close up the entire—

A. To clean up the entire floating indebtedness, and my recollection would be now that that cleaned it up.

Q. That is to say, the $20,000,000 of bonds and the $2,000,000 of stock?

A. That cleaned up our entire indebtedness to him.

Q. That funded those two issues of all bonds and paid the floating indebtedness at that time to Mr. Flagler?

A. That is my recollection of it.

Q. That floating indebtedness, then, will appear in your statements subsequent to 1903, when this settlement was made?

A. Yes, from time to time.

Q. That being the time when you made the settlement?

A. Yes, sir.

Q. There was an entry June 20, 1899, to profit and loss charged off, $789,455. What does that item represent?

A. I should like to look at it. It is a good big sum of money.

Q. There are two items, one $92,444.56 just below.

A. That larger item, $700,000, was the balance of the profit and loss account which stood on the books at the time I took charge of the operations of the road. The New York office, at my request, had sent an examiner to Florida about the time I took charge of the operations, and he has examined my accounts every year since, and he thought it wise to open a new profit and loss account, so as to begin my history correctly. For a great many years we carried on what we called the old profit and loss account and the new profit and loss account. Those accounts are made up almost entirely, or very largely, of the losses on operating expenses from year to year, and that $789,000, or whatever the amount is, was the profit and loss account that had accrued up to 1894, when we started the new profit and loss account, and I treated it as a part of the cost or expense of the railroad to the owners, and charged it in plant account, and disposed of it in that way. That is true of the next larger item that you have got there, which represents our losses on some boats which went in in the same way.

Q. That is the $92,000?

A. The $92,000 item, yes, sir.

Q. And represents the losses up to a certain time?

A. Yes, sir—well, any losses between 1894 and 1895, when the new account was established—any losses that we might have had for instance on steamboats out of the operations went into the new profit and loss account, which stands today. In other words, we have a new profit and loss account, which has never been charged to plant account, which stands today. On that profit and loss account the losses on steamboats are carried. In other words, we did not charge steamboats to profit and loss account, because we were in hopes that the steamboats would clear themselves up, but they did not, and when we finally reached 1899, we made up our minds there was no use in carrying those two accounts on the books any longer, and we charged them right into the profit and loss account.

Q. The item of $789,000, then, does not represent any cash put into the road?

A. No, sir. The losses prior to 1894.

Q. It represents losses in operation?

A. Yes, sir, very largely loss in operation.

Q. And the item of $92,000 represents losses in operation of the steamboats?

A. Yes, sir.

Q. That does not represent any cash put into the road?

A. That is correct.

Q. Under the date of 1900 I call your attention to the Biscayne Bay improvement, $232,344.68. What does that represent? Do you wish to see the item?

A. No, I remember that item.

JUDGE HUNT: How is that entered?

MR. NEEDHAM: "To Biscayne Bay improvement, $232,344.68"; charged to property account.

A. Charged to plant account.

Q. Are you referring now to the Biscayne Bay improvement you testified to the other day?

A. Yes, sir, there are two items there. One of them represents the work from our dock at Miami to Cape Florida, a distance of ten miles over the bar,

bringing the water from 7½ feet to 11 and 12 feet, and some work which we did up the Miami River when we made our first landings, and the other one represents the work across the bay, called for by our contract with the Government. I think it was the larger item that represents the work across the bay, but I am not sure about that.

Q. Both items are expenses in connection with the dock at Miami?

A. In connection with the harbor developments, yes, sir.

Q. In connection with the harbor development there?

A. Yes, both of them.

Q. For the purpose of deepening the channel?

A. Yes, sir.

Q. For larger boats?

A. For larger boats, and we could not get any boats in there at the time.

Q. What boats were intended to be cared for by that improvement?

A. Any boats that might want to come in there, but we had our own boats to operate to Key West, Havana and Nassau.

Q. Were there any other boats to come in there at that time really?

A. There were no boats running in there regularly until we made this improvement. Yes, there were. We were running from Key West—no, at the time when we started to make this improvement there were no boats running in there at all. We began these improvements, I think, in 1896.

Q. You have furnished me with a copy of the contract with the Government?

A. Yes, sir.

Q. And this bears date the 15th of May, 1902, and is in reference to this same improvement?

A. Yes, sir.

Q. The Government doing a part of it, and this company doing a part of it?

A. Yes, sir.

Q. This is a true copy of the contract with the Government?

A. Yes, sir.

Q. I should like to have this introduced as a part of the record in connection with this testimony.

(The document referred to is marked "Parrott Exhibit 12.")

Q. What plans would you have that called for such an extensive improvement of the channel at Miami?

MR. ST. CLAIR-ABRAMS: I should like to see that contract, as long as you have put it in evidence.

A. Under that appropriation we asked for an 18-foot channel in there. We thought that would be enough to accommodate such commerce as would come in and out of Miami. It was a convenient point of departure to meet the Nassau business, which was very considerable, and it also was a convenient place for our lines running to the south.

MR. NEEDHAM: Where were you operating the Nassau boat before you made those improvements?

A. We never operated there but one winter, and that was from Palm Beach, but that was not practicable.

Q. It was necessary to make this improvement for the Nassau boats?

A. No, not altogether for the Nassau boats; for the general traffic that might come in there.

Q. You have emphasized the fact that you are good business men. Of course you are. Now you have something in view, some business coming in there, or you would not have made this very costly improvement. What boats did you have in view?

A. The Nassau boats and such other boats as might want to do trading in there.

Q. Do you mean to say that that construction was entered into, and this contract made with the Government, without having in view any particular line of steamers that were to operate into Miami?

A. We had to get the water first, of course, be-

fore we could offer anything to anybody, but we had always our own boats in consideration, both to the south and to Nassau, because at the time when we made that contract we could not tell how feasible this Key West end of it might be.

Q. Is it not a fact, Mr. Parrott, that you entered into that work and spent that money, and entered into this contract with the Government, with a direct view of conducting the business by boat from Miami to Havana and Key West?

A. I said that we intended to use that for our boats, because we were developing.

Q. What boats do you mean?

A. To the south, Havana and Key West, of course.

Q. When did you locate your station at Miami?

A. I should say in 1897 or 1898.

Q. How large a structure is that?

A. It is not a very big structure. It is not large enough for the business of the town. We are contemplating a new structure on the main line now. The waiting rooms are very small, and the baggage rooms are very small. It was one of our old stations that we had on the main line when we first went in there, and we moved it up to that point to meet the situation, without doing anything to it.

Q. Moved it up to where?

A. Moved it to its present location.

Q. From where?

A. Originally it was on 12th street. It was right in here, originally.

Q. That is, near these yards on the river?

A. Yes, near the river yards.

Q. Is it not a fact that at the time you located there the boats come up the river and landed on the river, and not on the front?

A. At the time we located there we had no boats here. We were not running the boats, and we did not run the boats for nearly a year after we made this location, until we had dug out the bay and the river.

Q. Where did you first commence operating boats from on the river?

A. On the river at this dock?

Q. Right at this dock.

A. Yes, sir, after we had made this improvement.

Q. When did you go in there?

A. We got in there in April, 1896.

Q. When did you commence operating boats from that place?

A. Some time in the summer of that same year, but we did not begin the operation. Mr. Harmon began the operation of the steamboat line from Miami to Key West, and we bought him out, I think early in 1897, and he operated to that dock. Now it was in March of 1899 before we got up to the other location, up here.

Q. When did you commence operating the boat to Havana?

A. I should say in 1897 or 1898.

Q. Where was that boat operated to, with reference to landing at Miami?

A. It is barely possible that our first operations were in here (indicating).

Q. On the river?

A. Yes, sir, but we came here very soon after we leased her.

Q. But the operation commenced here, at the river?

A. Yes, sir.

Q. Is it not a fact that when you first went to Miami your plans were to connect with the water at the Miami River, and for that reason you located your passenger station and your yards as you did, on the river?

A. Yes, it would have made less work for us if we could have gotten in here, and have located at this point, rather than up here (referring to the map).

Q. Was not that your plan when you first went there?

A. Our first plan was to locate here, yes, sir.

Q. To locate on the river and operate from the river?

A. Yes, sir. Our first Nassau boat that we ran out of this bay ran from that dock.

Q. When did you make the change, and decide to locate upon the bay?

A. I think it was in March, 1899. I think in the summer of 1898 we were doing this work. I think we came up here with our first boat from Nassau in the middle of March, 1899, the year after the war. Hold on! I think it was earlier than that. I think it was in 1898. We had that boat in 1897 and 1898.

Q. At that time you built this spur, this cut-off, down to the bay, did you?

A. Yes, sir.

Q. And acquired your depot ground there?

A. Yes, sir.

Q. And acquired this river front which you say is to be used for the storing of cars?

A. Yes, sir; warehousing, etc.

Q. Warehouses, etc.?

A. Yes, sir.

Q. In other words, at that time you changed your plan entirely from the river to the bay, and adjusted your line to the bay with reference to connecting at that point with the boats?

A. Yes, sir. We have done that at a great many places as we have gone along. Wherever we got to the end, we have made river connections, in order to get the river business.

Q. You say you were then operating a boat to Key West and a boat to Havana, when you made this?

A. I do not recall just when we started that Havana business, whether we went up the river or not. It does not seem possible that we did, with the character of boats that we were operating, but I do not just recall when that business began.

Q. Is it not true that all the landings at Miami, previous to the improvement of the bay, were made in the river?

A. Oh, yes, all the landings were made there.

Q. The landings by boat?

A. Yes, sir.

Q. And that was your landing up to the time you made the improvement at the bay?

A. Yes, sir.

Q. Your first improvement, however, at the bay appears to have been in 1900, judging from this charge. Is that correct, or was it made before and then charged into the account?

A. No, we carried this as "Biscayne improvements" for a long time, as a separate account, and then when we supposed they were completed, we charged them where they belonged.

Q. This improvement in the bay was absolutely necessary in order to land your boats at this point?

A. We had to have more water than the bay afforded, and we did not have the room down in here to handle those other boats. For instance, we could not get up the river with but 9 feet of water, even after we had made our improvements, and we selected this point as being the most available.

Q. Do you remember how much was spent in the river before you decided to go to the bay front?

A. I do not. That is a part of the whole improvement.

Q. But that is a part of the improvement that went into this account?

A. Yes, into the $230,000 or the other account, I don't remember which one.

Q. Before you could commence landing boats at the bay front you had to make these improvements?

A. Yes, sir.

Q. They were made therefore before you commenced running the boats from Havana and Key West?

A. No, the Key West boat ran up in here first.

Q. Before you began running in the bay you had to make these improvements?

A. Yes, sir.

Q. It was impossible to run boats of any draft in there at that time?

A. Yes, sir.

Q. And that included the dock and included the deepening of the channel?

A. Yes, sir.

Q. And it included in your plans the removal of the passenger station from near the river to the point where it is now located on the bay?

A. That did not go into Biscayne Bay improvements, the removal did not.

Q. But you say the plan involved that?

A. Yes, sir.

Q. Was it not in connection with that general improvement that you entered into this arrangement with the Government, represented by this contract?

A. Yes, sir.

Q. How long were you negotiating with the Government for this appropriation before the date of this contract?

A. I should say two or three years. I don't remember. We were in one river and harbor bill, and failed to get into another one.

Q. You were struggling for two or three years to get an appropriation, were you not?

A. Yes, sir.

Q. And finally got the appropriation on the condition of your making this contract?

A. Yes, sir.

Q. When did you first make your survey over the Keys?

A. In 1904 we started, completed the actual location in 1905.

Q. How far did you go with your survey in 1904?

A. We had a preliminary which was completed, I should say, in April, and then Mr. Meredith came into the service in July, and we finally filed our plats

in July of 1905. They were at work on these plans and on the surveys and plans all the time.

Q. But you commenced surveying there in 1904?

A. Yes, sir.

Q. Did you make any surveys on the Keys before the Panama Canal was projected and adopted by the Government of the United States?

A. I do not remember when that plan was projected, but I do not think we did.

Q. Your survey of the Keys was made after the Panama Canal was a certainty?

A. That is my recollection of it, yes, sir.

Q. When did you first receive an official report from your engineers with reference to the possibility of going over the Keys to Key West?

A. I should think somewhere in the early summer of 1904 we got our preliminary, but we got the actual location in 1905.

Q. When did you commence your efforts to get the bill through the legislature of Florida allowing you to construct your road over the submerged lands?

A. The legislature was in session in 1905, in April, and during that time—

Q. When did you first commence your efforts to get that? When was the bill introduced?

A. I do not remember, but the legislature came in session in April, 1905.

Q. Do you mean the legislature that passed the bill?

A. The legislature that passed the bill, yes.

Q. You had made some surveys before that time, you say?

A. Yes, sir.

Q. When did your board of directors, or your stockholders, take action upon the report of your engineers with reference to the construction over the Keys?

A. My recollection would be that it was in April or May of 1905.

Q. Where are those records kept?

A. There is one hanging in my office, a blue-print of the resolution. I think that has been filed in the office of the Secretary of State, a copy of it with their certificate on it. We have that in my safe in Florida.

Q. Where are the records of the stockholders and directors kept?

A. They are kept by the Secretary.

Q. Where?

A. They are usually kept in my office in Florida, although at times the directors' books go to New York, as the Secretary is not always in Florida.

Q. Where do you hold the stockholders' meetings?

A. At Mr. Flagler's office usually—the stockholders' meetings we always hold in St. Augustine in our own office.

Q. Where do you hold your directors' meetings, I mean, in New York or St. Augustine?

A. Either in New York or St. Augstine, Mr. Flagler's office in New York, or at our offices in St. Augustine.

Q. Where was the meeting held at which you determined to build this extension over the Keys?

A. It would be my recollection that it was held in St. Augustine.

Q. Had the matter been before the Board of Directors as a body before that?

A. No, sir.

Q. It came before them for the first time on the report of the engineers?

A. I suppose that every member of the Board knew about it and had discussed it. We had a very small board at that time. That was the first time it had ever been discussed by the board formally and in session.

Q. When did Mr. Flagler determine that the road should be built over the Keys?

A. After we got Mr. Meredith's final report on the feasibility of the line.

Q. Who directed that those surveys should be made?

A. I presume that Mr. Flagler, as president, directed me to have them made.

Q. Was there any action taken by the Board of Directors?

A. No, sir.

Q. Mr. Flagler's wish has been generally observed, I suppose, in all those matters?

A. Why, yes, but Mr. Flagler usually discusses those matters with his people about him before he takes any steps. He gets their views, and usually those views are harmonious.

Q. Will you give us a copy of that resolution which you say was posted in your office?

A. Yes, sir.

Q. I suppose if you posted it, you have no objection to furnishing it?

A. No, it is on file in the office of the Secretary of State.

Q. Will you give us a copy of it?

A. Yes, sir.

Q. I also want to introduce, in connection with this, this act of the Legislature of Florida. May I tear that out?

[Act of the Legislature of Florida offered in evidence and marked "Parrott Exhibit No. 13."]

A. Help yourself to it.

Q. It will save copying so just tear this out. This is a printed copy of the act that was passed, isn't it?

A. Yes, sir.

JUDGE HUNT: That was a special act of the Legislature?

A. Yes, giving the privilege to build over the Keys, not to this company, but to any company that might construct.

MR. NEEDHAM: Was that act of the Legislature passed at your request, or at the request of your railroad company?

A. I do not think so. It was discussed by some friends of ours, and it is my recollection that it was proposed by some friends of ours. We had discussed it with them and had it under consideration.

Q. Do you remember who?

A. No, sir, I do not.

Q. Do you know who had charge of it?

A. I had nothing to do with the act in the Legislature.

Q. I was simply asking the fact, that this was obtained for your benefit?

A. Yes.

Q. It does not mention your road in the act itself, but it was in fact obtained for you?

A. It was commonly known at that time that we were contemplating this road.

JUDGE HUNT: Have you a constitutional provision in Florida which forbids special legislation?

MR. ST. CLAIR-ABRAMS: Oh, no.

JUDGE HUNT: It is couched in general terms, "any road," and I took it that there might be a constitutional prohibition of special legislation.

MR. ST. CLAIR-ABRAMS: I do not think there is any secret about it.

MR. NEEDHAM: I do not claim there is any secret about it, I simply want to connect their road with it, that is all.

A. Your reasoning is correct, I think. That was the reason that was put in that particular way.

MR. HUDSON: There is such a constitutional provision, and that was the reason why the act was framed in general terms, according to my understanding.

MR. NEEDHAM: But it was at the instance of your road, or those connected with it, that this was asked for?

A. We were not the movers in it, sir.

Q. Did you understand, or do you understand, that there was any other road that proposed to build this?

A. I never heard of any.

Q. Was there any statement made with reference to its feasibility at that time, to the Legislature?

A. That I do not know.

Q. You do not know.

A. I do not. The Key West people—

Q. If there was any representation made upon actual surveys, it must have been upon your survey.

A. Yes, I should think so.

Q. Do you know of any other survey having been made over the keys except your own?

A. There have been reported surveys, but I have never been able to find them. There have been charters for that line, but I have never looked into them.

Q. Are you continuing the work of deepening the channel at Miami?

A. We are not. We are waiting on the Government.

Q. When did you stop work?

A. We stopped as soon as we had carried out what we thought was our part of the contract, waiting for the Government.

Q. What time did you stop work there?

A. My recollection would be it was somewhere in the year 1905. We needed the dredges on the extension, and we hastened our work there on the bay, and as soon as the dredges had finished there we sent them to the extension, I should think in the latter part of 1905. I do not remember just exactly.

Q. You took practically the plant that was at work in the bay, deepening the channel, and transferred it to your work on the extension?

A. Yes, sir.

Q. Are there any boats coming in there now?

A. There are a great many yachts down there, and the Nassau boats coming in there.

Q. Any others?

A. None that I know of, regular lines.

Q. You did not go to this very large expense for the purpose of accommodating yachts, did you?

A. No, not altogether, although we are glad to have them. They make business for us, but we do not do it for that reason.

Q. Is it not a fact that you did that for the purpose of making water connection with Havana and Key West?

A. As I stated in the beginning, we not only had Havana and Key West and Nassau in view, but we had the idea of an open port there, or a port that would help our line, and whatever helped that town would help our line.

Q. But you did have in view the Havana and Key West connection?

A. Yes, at that time.

Q. When did you determine that you would again move your station and locate it on the main line?

A. When the question of a new station came up, about a year ago, it seemed to us to be the best thing to do, to get down on the main line, in order to save the expense of running in here and operating in here with our passenger trains.

Q. Where does your main line pass in going through Miami to the extension?

A. Right straight down in that block there (referring to the map).

Q. It is not shown on this map, but it crosses the river from the yards?

A. Yes, sir. That is, it goes right across there.

Q. Your plan then is to give up a station down on the bay, and to locate it on the main line as it is now operated, is it?

A. Yes, sir.

Q. Is there any other plan in view with reference to this spur that runs down to the bay here?

A. We keep that spur in there to put in more car tracks in here, to accommodate our own storage, and also to accommodate any warehouses that private people may want to put in that section.

Q. Have there been any warehouses put in here?

A. None in here. There have been some over on the main line.

Q. There are none on the line running down from the main line to the bay?

A. No, sir. We have needed all that room ourselves, operating in there.

Q. Have there been any warehouses put on the bay front?

A. None whatever.

Q. Is it your plan now to use the bay front for storage of cars?

A. Yes, sir, for warehouses or storage of cars. This place over here is the car storage proposition. This in here is for warehouses and for storage.

Q. That is on the bay front?

A. On the bay front, yes, sir.

Q. Do you mean that this is primarily for the storage of cars down here?

A. No, I mean that this is for the warehouse proposition. It is not being used for anything now.

Q. You would not use it for storing cars except for storing them in warehouses that might be put there for either loading or unloading?

A. Yes, sir.

Q. Your storage of cars would be carried on entirely at the yards?

A. Largely over here. Whenever you have got a track, you do not always ask yourself whether you have got it labeled storage track, or whether you have got it labeled warehouse track. You put your cars in there. We have got about so many cars to take care of.

Q. Have you any tracks down there?

A. We have got no tracks beyond this point here (referring to the map).

Q. You have no tracks on this bay front?

A. No, sir.

Q. For the storage of cars?

A. No, sir.

Q. Have you any plans to-day for putting in any tracks there for storage?

A. Only just in the rough, that is all.

Q. What do you mean by in the rough?

A. We sit down with the engineers and discuss the question, and give them our ideas, and work them out from the rough into detail.

Q. Have you made any detailed plans?

A. We have never made any detailed plans of it.

Q. By putting tracks in there?

A. We have never made any detailed plans of it, no, sir.

Q. But you have detailed plans for putting tracks in here (referring to the map).

A. Not on that part, but on this part we have, and we have tracks there; not here, but all in here (referring to the map) we have tracks running up in here. I think the last letter I wrote before I left home was to advise my vice-president that I had not told the general superintendent that he could go to work and put some tracks in here, that I wanted him to take that matter up and confer further with me, and I have a plan that he could work to, in here.

Q. What is the distance from the main line down to the bay, the distance of this track?

A. I do not know what it is. These are 50-foot lots. There are 10. That would be 500 feet. This makes 1500 feet here, and that is 150 feet. That is 1650 feet—2100—

Q. 500 feet to a block?

A. Yes. That would be in the neighborhood of 2,000 feet.

Q. Do you run any passenger trains down there now?

A. All of them are running in there, practically.

Q. All of them are running down there.

A. Yes, sir, because our station is here. Then we back out on this Y and go on.

Q. After your station is changed to this point, will your passenger trains run that way?

A. We will run no passenger trains in there.

Q. The amount of money that you spent upon the Biscayne Bay improvement, both for the dock and for the deepening of the channel, is practically abandoned, is it not, so far as use is concerned, with the exception of the Nassau boat?

A. As far as we are concerned, yes, sir.

Q. And so far as the public is concerned, with the exception of yachts?

A. Well, to-day, yes, sir, and yet for several months they had a line of boats on there from Jacksonville to Miami, and were using that dock.
Q. Is that in connection with your road?
A. No, sir, it had nothing to do with it.
Q. In competition with your road?
A. Yes, sir.
Q. Carrying passengers and freight?
A. Yes, sir.
Q. In competition with your line?
A. Yes, sir.
Q. And you furnished them your expensive dock and channel to get in?
A. Yes, sir.

JUDGE HUNT: We will suspend at this point until to-morrow morning.

(Thereupon, at 5 o'clock P. M. the further hearing of this case was adjourned until to-morrow, Tuesday, March 26, 1912, at 10 o'clock A. M.)

Washington, D. C., Tuesday, March 26, 1912,
10 o'clock A. M.

The Court met pursuant to adjournment.
Present, Judge Hunt.
Present on behalf of the complainant, Mr. St. Clair-Abrams and Mr. Bryan.
Present on behalf of the defendant, Mr. Needham, Mr. Esterline and Mr. Hudson.

MR. ST. CLAIR-ABRAMS: If your Honor please, in view of the putting in evidence of that statute of 1905, I will ask permission of the Court, because of my personal relations there, to make a statement, and let the Court determine whether or not it should be put in in the form of testimony.

MR. NEEDHAM: I object to this going into the record. We are filling the record full of arguments and talk.

MR. ST. CLAIR-ABRAMS: In 1893 I was a member of the State Senate of Florida, and at that time there was and had been since 1880 a complete obsession on the part of the people of Florida to have a railroad built to Key West. In 1893 I assisted in the passage of a law granting to the East Coast Railway Company so many acres per mile to build a road to Key West, but the road never got an acre of land—not a foot.

During this time I had not the slightest connection with the Florida East Coast Railway. In fact, if I may be permitted to state, I was politically allied with the faction of my party which was supposed to be hostile to all railroad corporations.

In 1904 I heard that there was going to be an attempt made by the faction with which I was affiliated to enjoin the East Coast Railroad from building across from the mainland to the keys, on the ground that the lands under these waters belonged to the State, and that it would take a legislative act to authorize the building over those submerged lands. Also a threat was made that if the road was built, to tax it to death.

I consulted some of the more conservative leaders of the faction to which I belonged, and the result was that I prepared that bill which became a law, and saw Mr. Parrott and asked him if that would remove the difficulty which had been threatened, and he said to go ahead, that if the Legislature would vote it, all right, and that bill was passed.

It may be proper for me to state, if your Honor please, that it was more than two years after that before I became in the slightest degree, directly or indirectly, or in any manner, shape or form, associated with the Florida East Coast Railway. In fact, before I drew up this bill, the situation with my faction had become such that I had told them I would not go with them any more. I think, in justice to the East Coast Railway, that fact should be stated, that this measure, as Mr. Parrott has

stated, was not brought about by the East Coast Railway, in any shape or form. In fact, I am certain that the East Coast Railway people had no idea of what was being done when I drew up that bill, consulted with Col. Cockrell and others, and took it to Mr. Parrott.

JUDGE HUNT: The constitutionality of that statute has never been tested in Florida, has it?

MR. ST. CLAIR-ABRAMS: No, sir.

JUDGE HUNT: I notice that it was confined to railroads then within the State. Of course, that limited the carrying out of the project to railroads then operating in the State, so that there were only three lines in the State, or two, which could have done it.

MR. ST. CLAIR-ABRAMS: Only two. There was the one on the west coast, which has moved to Fort Myers since, towards Cape Sable. The Legislature was very anxious to get a road built as speedily as possible, and irrespective of the constitutionality of the limitation, the sole purpose was to settle the question of the right to build the road across, and also to prevent taxing it to death.

JUDGE HUNT: A federal court would never question the constitutionality of that statute in this proceeding unless it was so obvious that there could be no other conclusion reached.

MR. ST. CLAIR-ABRAMS: Under our laws we had a right to apply for a charter.

JUDGE HUNT: I am not implying that it is not perfectly constitutional. Like yourself I once was in the legislature of my State. We had there a constitutional inhibition against special legislation, and it was a source of a great deal of trouble oftentimes, to overcome the effect of the extent to which the decisions have gone in some of the States with respect to special legislation. That is what prompted me to make the inquiry yesterday. Then when I looked at the law I noticed yesterday that it was limited to railroads then operating within the State.

MR. ST. CLAIR-ABRAMS: Col. Cockrell had quite a

reputation as a constitutional lawyer in Florida, and we discussed every phase of it, the purpose being to get the road built, whether the East Coast Road or the West Coast Road would take it. I have made these remarks in justice to the East Coast Railroad, and I wish to add this: It might be commented on that I am now associated with the East Coast Railway; but I think I was rather prominent in politics at that time, and in 1902 my position was well defined, that I had declined to go further with the extreme element in the faction to which I had up to that time belonged, and from that time to this I have declined absolutely to act with them on account of their extremely radical, and what I looked upon as socialistic, tendencies. I should like the record to show this in some way, so that the Court may be advised of the circumstances.

JUDGE HUNT: It would only become relevant in the event of the examination by Dr. Needham making it so. That would be its only relevancy. If he goes into the history of the act of the legislature, it would be relevant.

MR. ST. CLAIR-ABRAMS: He did go into that yesterday, and that was the occasion of my remarks to-day. He examined Mr. Parrott yesterday, and Mr. Parrott stated that the East Coast Railway Company did not introduce the bill or cause it to be introduced, but that some friend did it.

JUDGE HUNT: I did not quite understand the object of the doctor's examination, unless it would be to imply something in the nature of a conspiracy to procure legislation in the interest of this company. I do not use that word offensively. Otherwise it would be immaterial. Here is a law which upon its face is presumably valid. Now what prompted the legislature to enact it is wholly irrelevant, unless, as I say, the purpose would be to impute to the carrier an improper motive.

MR. ST. CLAIR-ABRAMS: In view of the examination by Dr. Needham I thought the matter over last

night, and I thought, in justice to this road, the facts as to that bill should appear of record. I am quite certain that no officer of the Sea Coast Company had the remotest idea of what I was doing when I first had my conference with Col. Cockrell and one or two others. It must have been a surprise to Mr. Parrott, because I had been supposed to belong to the so-called anti-corporation faction, although I had repeatedly on the stump—

JUDGE HUNT: There is a lot of it now which, so far as the Doctor's examination has gone, I regard as wholly irrelevant to the issue. He may connect it up, and he may use it to lay the foundation for a conspiracy, to show what might be termed fraud on the part of the carrier for the purpose of executing a chimerical scheme upon which no legal basis could be laid for the predicating of rates for the carriage of freight. Otherwise it is irrelevant.

MR. ST. CLAIR-ABRAMS: Therefore we ought to be permitted to show that there is not the slightest ground for any such imputation.

JUDGE HUNT: We will waive it and see what the Doctor is going to lead to in his examination.

MR. ST. CLAIR-ABRAMS: Very well.

J. R. PARROTT.

J. R. PARROTT, the witness under examination at the time of adjournment yesterday, resumed the witness stand.

MR. NEEDHAM: Mr. Parrott, I see that this act of the legislature provides in section 5 that a good and sufficient bond, with sufficient sureties thereon, in the sum of $25,000, conditioned for the letting of contracts, and so forth, shall be filed. Did your company file such a bond?

A. Yes, sir.

Q. Within what time after this act was passed?

A. Within the time prescribed by the act. I do not remember what that was.

Q. You do not remember the date?

A. No, sir.

Q. This act was passed after Congress had provided for the construction of the Panama Canal?

A. That would be my recollection, yes, sir. I do not just remember the date of the Panama Canal construction, but I know we had the Panama Canal before us all the time that our plans were going on.

MR. ST. CLAIR-ABRAMS: Before going any further, there is something I omitted to state. We never consulted the East Coast Railroad at all. The Board of Trade of Jacksonville took it up and appointed Senator Fletcher, now United States Senator, Mr. C. B. Rogers, one of the most prominent merchants of the town, and myself as a committee to go to Tallahassee to secure the passage of an act that would, if possible, obtain the building of that road to Key West. I had omitted to state that most important fact. I am quite certain that no officer of the East Coast Railway knew what we were doing when the Board of Trade passed that resolution and appointed the committee.

MR. NEEDHAM: What business in connection with the Panama Canal did your road contemplate at this time?

A. Nothing until the Canal was opened. We expected a call station at Key West, and we expected to handle mails, passengers and light, quick freights through the Canal.

Q. In connection with what route?

A. From the east and from the Pacific side and from the western side of South America.

Q. Just what do you need by call station?

A. That being practically the first port in the United States, most accessible, that steamers would touch in there and coal and water and probably transship a considerable percentage of their passengers who were desirous of getting to the east and west quickly.

Q. That is, ships carrying traffic between points other than in the United States would stop on their route?

A. Yes, between the United States and these points.

Q. Do you mean to say that you contemplated direct lines of steamers from Key West?

A. No, that was a thing that we thought might follow, but our feeling was at the start that the lines of steamers inaugurated to ply between Yokohama, we will say, or San Francisco, or Guayaquil, coming through there on their way to New York or on their way to the east, would touch in at Key West, and would give us business.

JUDGE HUNT: What is the date of that statute? You spoke of its relation to the Panama Canal.

MR. NEEDHAM: The bill passed in 1905, and was approved May 3, 1905. It recites on the face of it that whereas the construction of the Panama Canal renders it desirable to have this route, and so forth.

MR. ST. CLAIR-ABRAMS: That was the consideration that our committee had in view, regardless of the East Coast plans.

MR. NEEDHAM: It has been stated in the public print that after the Panama Canal construction was settled by Congress, Mr. Flagler called in his engineers and commenced the work of locating the line to Key West. Is or is not that the fact?

A. The engineers were called in after that act was passed. No work of survey had been made prior to that time, that is on the present line to Key West, although our survey on the Cape Sable route must have been under way prior to the passage of that act.

Q. Do you remember when that survey was made?

A. I do not. We were quite a long time completing that section, because of the uncertainty surrounding the whole extension at that time, that is, which direction it would take.

Q. Will the records of the directors show that fact?

A. No, I think not. I think that until we had actually settled the line, we did not pass upon the matter formally.

Q. Your expense accounts will show it, I suppose?

A. Oh, yes, our books will show it, and my own office records will show it.

Q. But you are unable to state just when?

A. I am unable to state just when that survey was made.

Q. As I understood you on your direct examination, you stated in substance that in the beginning you did not think very much of the Cuban business, but that it had developed in your mind?

A. Yes, sir.

Q. Since the construction of the road?

A. Yes, sir.

Q. Is that correct?

Q. That is true, yes, sir. When I say we did not think much of it, we had not considered the value of it. We knew it was there to be developed, as we reached it, but without that only as an incident, we might have constructed the road.

Q. Before you located and commenced the construction of the road to Key West, did you make any investigation of the traffic at Cuba?

A. Only incidentally to the Panama Canal business, but we did make an investigation. Mr. Flagler and I were in the island of Cuba for some two weeks, with Sir William Van Horne as a guide, and went over the island pretty much in detail, and saw its possibilities.

Q. When was that with reference to the time you commenced work on the extension?

A. I should say that that was some time during the time when the survey was going on, just before the survey was completed. My recollection would be now that it was in March of 1904 or 1905.

Q. Did you take up the matter of the diversion of traffic from the water routes to the rail route?

A. We did, yes, sir, at that time.

Q. Did you make any report of your investigation at that time?

A. No, sir, I had with me the only man to whom

I reported, and I did not have to make any report.

Q. Were there any computations made with reference to the business?

A. Only in a rough way, as to the amount of business that was being handled in the United States through the railroads.

Q. Through the railroads, in connection with water routes?

A. That was the only way out.

Q. Where did those water routes make connection with the railroads?

A. At Havana.

Q. I mean on the coast of the United States?

A. At New York.

Q. Were there any other lines plying at that time?

A. Yes, to New Orleans, and through Mobile and through Galveston.

Q. Do you recall the amount of that traffic to New Orleans, and what it consisted of, in a general way?

A. I do not know how it is divided. I only know the amount generally speaking of two or three of the heavier articles, like sugar and molasses. Those were the heavier commodities.

Q. You spoke yesterday about the competition with the Illinois Central in the transportation of pineapples. Where did those go so far as the water was concerned?

A. To New Orleans. I remember that at the time this matter was under discussion, Mr. Stuyvesant Fish, who was at that time president of the Illinois Central, in a talk that he had with us, said that we would ruin the business of the Illinois Central through New Orleans if we carried out our plan; and Mr. Flagler remarked to him that if there were not 15 barrels of flour to be moved where there was one now, he would be mistaken, and that he thought we all ought to get an increase, and that if he did not think so he would not go into the business.

Q. You are referring now to the traffic from the United States to Cuba?

A. Between Cuba and the United States, yes, sir.

Q. The increasing of the traffic in that direction?

A. Yes, sir.

Q. What investigation did you make with reference to the Panama Canal traffic?

A. Only in a general way. That was something that we could not get at. It was all so in the air. But we believed there would be a large amount of business, judging from the amount that was moving from other countries into this country particularly at that time through San Francisco, and from the south. For instance, take the government of Ecuador. They have a railroad of three hundred and odd miles, that is owned and operated by Americans. That company is constantly making an endeavor to increase their population, through the United States. They are shipping, not large quantities at the present time, but there are large possibilities of freights out of that country, and I have had more or less conferences with those people in Ecuador. But they are not the only people in South America. For instance, we had one or two meetings with Mr. Barrett, president of the Bureau of American Republics, and he was very enthusiastic about this proposition in its relations to South America, on the western coast particularly, claiming that his people, so far as he knew them in South America, were more interested in the construction of this line than they were in the Panama Canal. In other words, that had passed into their minds as a fact, and they were then giving attention to the construction of this line, because it would bring them so much more closely in touch with the United States.

Q. Did you make any statistics in regard to that business for the purpose of forming any judgment as to how much business would come to this road at Key West?

A. We did not.

Q. Have you changed your views about that traffic?

A. No, sir.

Q. Since the road was built?

A. No, sir, but it is all problematical. That is, I mean by that, that we have never reduced anything there to figures. It is simply a matter of confidence in the possibilities of those countries. That is, if we can save four or five thousand miles of travel to a steamship line through the Panama Canal, why, the business is going that way, has got to go that way necessarily, because the freight rates, as a matter of fact, would force it that way. And if I were to take the figures—we looked at the figures but we made no computation—if I were to take the figures as to our relations to Japan or China, or any of the Oriental countries, the very figures themselves would impress you without working out the details of how much business you might get. You are in it with the balance of them, to get what you can. So, if we move a large volume of business through Florida, the percentage that Florida is going to get out of that business is going to be of value to her. If it simply moves through Florida, more or less of it is bound to follow that line of travel.

Q. The change of your mind then with regard to the business has been wholly with reference to the Cuban business?

A. Yes, sir.

Q. That has rather developed in importance in your mind, over what it was at the beginning?

A. Yes, sir.

Q. The possibilities of it?

A. Yes. We knew it was there. We had it in our minds, in connection with the other proposition, but just what it would amount to we could not tell. But we have found out, since we have made our investigations, that the possibilities of that business would practically carry this line if there was nothing in the Panama Canal.

Q. Looking back now to the time when you determined to build over the Keys to Key West, what

would you say was the dominant, impelling consideration, the Panama Canal or the Cuban business?

A. The Cuban business. At the time when we determined, we had made our investigation, and we knew what the Cuban business amounted to; and while we may possibly get more business from the Canal than we get the other way, we said, "We can rely upon this proposition to carry the property."

JUDGE HUNT: When was it you made that trip to Cuba?

A. I believe it was in 1905, after the survey had practically been completed.

JUDGE HUNT: How extensive was the examination?

A. We went practically from Havana to Santiago, running into all the branch lines of the Cuban Railroad, and went through the sugar mills, and the furnaces at Santiago, and the fruit fields.

JUDGE HUNT: What is the approximate importation of sugar from Cuba to the United States?

A. I do not remember just the amount of it. I do know that two years ago the United Railroads brought through Hanava 690,000 tons of sugar.

JUDGE HUNT: Through Havana?

A. Exported it.

JUDGE HUNT: That is to the world?

A. Yes.

JUDGE HUNT: You do not know what the importation was to our country?

A. I have always taken it for granted that nearly all of it went to the United States.

JUDGE HUNT: That is subject to a heavy duty, is it not?

A. Yes, but not so heavy on the raw material. They refine very little sugar in Cuba. It all comes into this country as raw material, and as the rough brown sugar is refined in this country, the rates on the raw material are comparatively low.

JUDGE HUNT: That is a large tonnage, 600,000 tons.

A. As I remarked yesterday, there is a total tonnage that we can possibly reach more than our share of, of about 2,000,000 tons.

MR. NEEDHAM: Are you speaking of sugar now?

A. No, of all commodities.

MR. ST. CLAIR-ABRAMS: Cuba has a 20 per cent preferential with the United States.

MR. BRYAN: On sugar, a 20 per cent preferential over sugar coming in from any other part of the world.

A. Yes, and also on fruits and vegetables.

MR. NEEDHAM: At that time you did not make any figures or computation with reference to the traffic, or what might be termed a formal report with regard to it?

A. No, sir.

Q. Have you since that time taken the matter up and looked into it in detail, with a view to ascertaining the business?

A. Yes, sir.

Q. You are speaking then from general information?

A. General information given me by the people who are handling the business.

Q. What is the freight rate on sugar from Havana to New York by water?

A. I do not know. I am not a traffic man. Mr. Kirtland can answer that question. I could not tell you a single rate, freight or passenger, on our line.

Q. You stated to the court that there were some things in your favor?

A. Yes, sir.

Q. Dispensing with bagging was one of them?

A. Yes, sir.

Q. You spoke of the transfer from the ships to the docks as another?

A. Yes, sir.

Q. In case you took the cars directly from Cuba. You are figuring on taking the sugar in bulk?

A. Yes, sir.

Q. You are referring of course to raw sugar?

A. Yes, sir.

Q. Taking it in bulk in the car?

A. Yes, sir.

Q. Whether you get that business, or whether it is profitable, depends on what the ships are carrying it for, does it not?

A. Yes, sir.

Q. And you have not made any inquiry with reference to that?

A. Yes, sir, our people have all those figures.

Q. And don't you know something about them?

A. No, sir, I do not. If I looked into it at any time, I would try not to remember it the next day.

Q. But you do remember in detail what the bagging would cost?

A. Yes, sir.

Q. And the transfer cost, but you do not remember the freight rate which is charged by water?

A. I do not.

Q. And with reference to which you have to compete, in order to get the business?

A. I do not remember that.

Q. That is quite an important element, is it not, in determining whether you could get the business or not?

A. I remember this part of it, that as we would be starting in with a preferential over their rate, whatever it was, there was a good profit in it for us. I do not know just what the rate was. I am not prepared to say. I do not recall that fact.

Q. But you are quite sure there was a good profit in it for you?

A. Yes, sir.

Q. Do you know what quantity is carried in the ships from Havana to New York?

A. Do you mean at a load?

Q. Yes.

A. It depends very largely on the size of the ship.

If she is a ship of 3,000 tons, she carries 3,000 tons, probably.

Q. How many carloads would that make?

A. Fifteen tons to the car, it is 200 cars, practically.

Q. How many cars do you take as a train over your system?

A. Over the extension?

Q. Yes.

A. We can haul fifty cars with ease over the extension.

Q. A shipload then would represent four trains?

A. Yes, sir.

Q. What is the distance from Jacksonville to New York by rail over your connections?

A. I think it is 1,020 miles, something like that.

Q. And from Jacksonville to Havana by your line, and the ferry?

A. Five hundred and twenty-two miles to Key West, and it is 105 statute miles by water.

Q. Making something over 1600 miles of a haul from Havana to New York?

A. Yes, sir.

Q. By the rail route.

A. Yes, sir.

Q. Do you know what the distance is by water?

A. I do not.

Q. You referred yesterday to some competition with the Illinois Central with reference to pineapples. You say those pineapples went by way of New Orleans in the first place. Where were they carried by the Illinois Central from New Orleans?

A. Generally to Chicago points, tributary to Chicago. It was the Chicago rate that we figured on.

Q. What was the rate from Havana to Chicago by way of the Illinois Central?

A. I told you I do not carry those rates in my mind at all. My recollection would be—and it is simply a recollection—that our rate out of our territory was something like 67 cents, and they were making a rate of 57 cents, or something like that.

Q. Where was their rate from?

A. From Havana.

Q. From Havana to Chicago?

A. Yes, sir. Our rate from the Jensen territory was something like 60 cents. Those are not exactly the figures, because as I recall it now, there was something like thirteen cents difference in the two rates.

Q. What was the final result of that competition?

A. They put the Cuban pine through the port of New Orleans on the basis of our rate out of Jensen.

Q. That is to say, they raised their rate?

A. They raised their rate.

Q. And it was by raising the rate that you think you worked out an advantage to the shippers from Florida?

A. Yes, sir.

Q. That is, bringing them into equal competition?

A. Putting them on a parity with their competition.

Q. After that occurred did you not carry pines from Cuba to Chicago?

A. Yes, sir.

Q. From Knights Key?

A. Yes, sir.

Q. What did you carry them for?

A. I do not remember; less than our own rates; I mean less than the rates out of central territory; but just what the rates were, I don't remember.

MR. ST. CLAIR-ABRAMS: You will find them all stated in the proceedings before the Interstate Commerce Commission.

MR. NEEDHAM: There is no question about that at all. You then carried pines from Havana to Chicago for less than the rate out of your own territory, in Florida?

A. Yes, sir. We had it to do if we wanted to carry them, because they had the rate through New Orleans.

Q. You did not think it was right for the Illinois

Central to do that, but you did think it was right for you to do it?

A. We thought it was right to put our shippers on a parity with their competitors, and that is what we have always maintained. We have maintained rates even through Knights Key, that left our shipper on a parity with the Cuban shipper.

Q. How would that be so if the rate was lower?

A. It was not lower. In other words, the Cuban shipper through Knights Key for Chicago practically had to pay the same as the Cuban shipper through New Orleans and that put the Cuban shipper and our shipper on a parity.

Q. I thought you stated that the Illinois Central rate was raised to the same rate as you charged the Florida fruit grower to Chicago?

A. Yes, sir.

Q. The testimony shows that your rate from Havana to Chicago was less than the rates charged to your fruit growers from Florida to Chicago.

A. I do not think that is true. I do not think the testimony shows it.

Q. You do not think that is the fact?

A. I have not heard it, and I do not think it is right. It was less from our point of shipment, that is, from Knights Key, than it was from our territory, but the total rate from Havana to Chicago was the same either way.

Q. That is by New Orleans or by your route?

A. Yes, sir. In other words we did not charge the shipper at Stuart any more than we charged the shipper at Jensen, which is twenty miles above him. We had to move that business at Havana in order to compete with the Illinois Central, but we were putting that stuff into the market at the same price to the Cuban shipper that we were putting our own shipper's freight into the market.

Q. That is your understanding of the arrangement?

A. Yes, sir.

Q. What is the title of this land company?

A. Which land company do you mean?

Q. The one of which you are the president, the Florida Land Company. Is it the East Coast?

A. There are several. There is the Model Land Company, the Fort Dallas Land Company, and two or three other land companies; but if you mean the one in which our titles are being held, of outside land and properties, it is the Model Land Company.

Q. You are the president of that?

A. Yes, sir.

Q. What lands in a general way are held by your company?

A. Town site lands—the lands in and around Miami, in and around Palm Beach, in and around St. Augustine, and such lands as were held by the original roads at the time we purchased them.

Q. At the time the railroad purchased these roads, they held grants of lands more or less, from other parties?

A. Yes, sir.

Q. Parties who have made contributions to the road?

A. No, they were very largely from the State.

Q. How much in general terms, how many acres are represented in that?

A. I should think somewhere between 300,000 and 400,000 acres. I do not remember just the exact acreage; perhaps 350,000 acres, and then at another time the Model Land Company bought 40,000 acres from the Canal Company. In other words, this whole country for miles was flat and needed drainage, and Mr. Flagler put $200,000 into the Florida Coast Canal and Transportation Company, for the purpose of having them continue their drainage, or they called it a canal system, their inland waterways from Biscayne Bay north, and after they had spent that money, he made a trade with them by which he took over 40,000 acres of their lands in lieu of the contribution, or the investment that he had made in the property.

Q. And that was conveyed to the Model Land Company?

A. That was conveyed to the Model Land Company direct.

Q. With reference to those lands from the railroad, to which you have referred, were those conveyed by the railroad company to the Model Land Company?

A. Yes, sir.

Q. Was there any consideration paid for it?

A. Yes, sir.

Q. Where does it appear in the accounts?

A. Somewhere in the book there. They got a credit of $600,000 or $700,000 at one time.

Q. Was that a credit of cash paid?

A. You might call it cash, because our indebtedness to Mr. Flagler was all cash, and our indebtedness was to be reduced. Now just what the entry was I do not know, but my understanding was that our indebtedness was to be reduced by that amount.

Q. That is, the Model Land Company was to receive this land, and you say the indebtedness to Mr. Flagler was to be reduced?

A. Yes, sir, in other words, he took the notes of the Model Land Company instead of taking notes from us.

Q. And you think that appears in the plant account?

A. That is my understanding of the transaction. I do not know—we may have taken notes of the Model Land Company for that amount, but I do not know just what the entries were that were made. But ultimately that is what would happen to the proposition, and it was my understanding that that was to be done in that way. Now whether we did reduce our indebtedness to Mr. Flagler, or whether we took notes of the Model Land Company, that I do not know.

Q. If you took notes of the Model Land Company it would appear as a credit to your property account?

A. Yes, sir.

Q. And it should appear as a credit to your property account?

A. Yes, sir.

Q. That is to say, the lands belonged to the railroad company, and if it conveyed them out, it would come out of the property account?

A. Yes, sir.

Q. To the extent of the value of those lands?

A. Yes. We carried those lands on our books for a great many years without making any appraisement of them at all. They never were appraised. They were really a part of the consideration of the properties. In other words, when we bought the St. Johns and Halifax, I think they had more lands than any of the other companies; that is, the lands between Daytona and Palatka, and we simply carried those lands in open account without any appraisement of them. They never were appraised.

Q. That was a part of the property in each of these cases that was turned over to the parent railroad company when you purchased these lines?

A. Yes, sir.

Q. Did your company receive lands directly from owners and corporations along its lines, as contributions other than contributions for rights of way?

A. Yes, in some instances we received a few hundred acres.

Q. How much did they amount to in the aggregate, approximately?

A. So very little that in all our more recent work I have taken the position always that I would rather be without it than to have it. It made us more trouble to have it, because whenever a man gives you a piece of land as a donation in that way, he usually expects that he is to be carried over the railroad for life, and all his freight; but I have no recollections of donations anywhere except for the construction of the line between Daytona and Titusville, and

Rockledge and Melbourne. I think there are some donations in that territory, but outside of that we have no donations. Mr. Flagler got some donations from Mrs. Tuttle at the time we built into Miami, but they were in consideration of his constructing the railroad, and also building a hotel there.

Q. That was a direct contribution to him.

A. Yes, sir.

Q. How much was that?

A. My recollection would be one-half of 640 acres, after first taking out the hotel grounds. Then the balance of it was divided between Mrs. Tuttle and Mr. Flagler, and then he got some donations on the south side of the river from the Brikells. Just what they amounted to I do not remember. There was nothing of the front. It was all back land, and some lands bordering on the river, on the south side of the Miami River. And they gave him some lands, I think, out in the river.

Q. Were those lands that were given or donated to your company after its organization turned over to the Model Land Company?

A. If they were, they went in at the same price as the others.

Q. I did not ask you about the price. I asked you if they were turned over.

A. I do not know just exactly. We undertook to clear ourselves of all the lands we ever had.

Q. Lands that you did not need for railroad purposes?

A. Yes, sir.

Q. So far as you know, that policy has been carried out?

A. Yes, sir. There are a few lands. I came across some the other day, that seemed to stand on our books, that I can account for in no other way than that they are some of these donations, out west of Titusville, around in township 21. There are two bodies of land, one of them 200 and odd acres, and the other 300 acres. They are not contiguous to our

property, and they do not form any part of it. They must have come to us either through the purchase of some of those old roads, or by donations. Just how we got them I do not know.

Q. Referring again to the canal tract, you stated that that was 40,000 acres. Are you positive that it was not considerably more than that? I ask that question because you have stated that it was more.

A. Not in that purchase. We got lands from them as a donation, which are a part of this whole 336,000 acres or 350,000 acres that I stated we had. I said I could not tell just how much the acreage was, but that it was somewhere between 300,000 and 400,000 acres. Now a part of that land came from the Canal Company, was given to the railroad company.

Q. Is it a fact that they gave to the railroad company about 200,000 acres in all, including the 40,000 acres?

A. That was not given to them. The Model Land Company paid $7.50 an acre for that 40,000 acres, and my recollection would be that there was about 156,000 acres or thereabouts.

Q. In addition to the 40,000 acres?

A. In addition to the 40,000 acres. That came in different ways. One was a donation in consideration of the fact that we were building through a country that had no land from the State.

Q. How much did that donation amount to in acres?

A. I should say about 150,000 acres. That was a part of the 350,000 or 400,000 acres.

Q. That was a contribution to the road in consideration of its building?

A. Yes, sir.

Q. And that was turned over to the Model Land Company?

A. For the price, yes, sir.

Q. What was the price of that which the railroad company received?

A. My recollection is it was $2 an acre.

Q. Do you know when that transfer took place?

A. I should say about two years ago. I do not just remember.

Q. I find in the report of 1911 this item under the head of credit in the profit and loss account: "Profit on lands sold during the year, $420,914.78." What was that?

A. That is probably what that transaction was. It was the transfer to the Model Land Company of those lands at $2 an acre.

Q. When was that transfer made?

A. I said it was somewhere about two years ago. I do not just remember.

Q. And put into the account of 1911, as appears here?

A. It probably was after the 1910 account was closed that the transaction was made, and it went into the plant account.

Q. In general terms where was that land located?

A. The lands that we acquired from the Canal Company were nearly all south of Rockledge and along in that territory. The lands that we got from the St. John Railroad were in St. John and Putnam Counties.

Q. I refer now to the lands received from the Canal Company.

A. I thought you referred to the whole transfer to the Model Land Company. The Canal Company lands, 156,000 acres, began at Rockledge, and back into the country, and went south. The 40,000 acres that we got from them were in Dade County, very largely, that is old Dade County, beginning somewhere about Lauderdale and running south from Lauderdale.

Q. Was it on the line of the road?

A. Part of it was near the line—there may have been some of it near the line, yes, sir.

Q. How far distant was it from the line in its farthest distance?

A. I should say none of it was farther away than two miles. That is, that 40,000 acres.

Q. How about the 156,000 acres?

A. I cannot tell you about the 156,000 acres. That came to the Canal Company practically in the alternate sections, in through that country south of Rockledge.

Q. But it was all south of Rockledge?

A. Yes, but that transfer of that 40,000 acres was made ten or twelve years ago.

Q. And would appear in the accounts of that date?

A. No, that is a transaction purely and simply with Mr. Flagler. It would appear in the Model Land Company's accounts.

Q. As I understood you, that 40,000 acres was transferred to the railroad company and then credited out, by a credit upon the—

A. If you did understand me so, either you or I are mistaken, because the 40,000 acres was bought by Mr. Flagler at $7.50 an acre for the Model Land Company and he paid for it.

Q. That did not go into the railroad at all then?

A. No, the railroad had nothing to do with it, but it is a part of the 200,000 acres you spoke of as having come from the Canal Company.

Q. Did the railroad receive the 156,000 acres?

A. Yes, sir.

Q. And that was turned over to the Model Land Company, as you recollect it, at about $2 an acre?

A. Yes, sir, which was a fairly good price for it, when you consider the lands that went with it in the upper tier of counties. In other words, there is some of that land in those upper tiers of counties that we bought in from the State at something like ten cents an acre, because it formed a part of the bodies that were owned in there. I do not remember now, but I think there were 10,000 or 15,000 acres that we bought from the State at ten cents an acre.

Q. When did that purchase take place?

A. That has been ten or fourteen years ago, along before the Everglades drainage was thought of.

Q. Where was that land principally located?

A. I think four or five miles west of Palm Beach and Lauderdale, out in that section of the country. They were all Florida Southern lands that had reverted to the State, and at the time we bought them they said they were white sand lands, but they completed a body of land. They probably were back of this 156,000 acres.

Q. Did the railroad pay for that?

A. The railroad paid for that land, yes, sir.

Q. Ten cents an acre?

A. Yes, sir.

Q. Was that turned over to the Model Land Company?

A. With the others, yes, sir.

Q. When was that transaction with the Model Land Company?

A. At the same time. It was a couple of years ago or thereabouts.

Q. That is included in what you suppose to be this item?

A. Yes, anything that we had as lands were turned over at that time. That is, we intended to turn over everything that we did not need for railroad purposes. We had held them a great many years, and they had been a loss to us.

Q. And you turned them over to the Model Land Company?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. That is all I have to ask. That is all unless Mr. Hudson has something.

MR. HUDSON: I think you have covered everything I wanted to ask.

Re-direct examination.

MR. ST. CLAIR-ABRAMS: Mr. Parrott, in view of the questions propounded to you by Dr. Needham, will you look at this plat which is in evidence. In addition to the mere question of water privilege on the bay, and the value as water front, I will ask you is there any other fact which renders this body of land, which the testimony shows to be, a considerable portion of it, filled in and made land on the bay—of special value to your road in its relation to the business of the road in Miami, which you can point out to the Court.

A. When we laid out this town originally through here we had rather narrow conceptions of the needs of a railroad, like most railroads have in their earlier days, and our yards were made long and narrow. We had 150 feet on one side and 100 feet on the other, practically through the town, and our business was practically confined to that area. As the business has developed, we find the necessity of a contraction, both for convenience of operation and for safety of operation, contraction into a wider and shorter space. In other words, running up through the town here, shifting and making up trains, and moving in and out of the yards, we are right in a center where we are constantly blocking the street, and not only having trouble with the travelling public, or the moving public, but it is not an economical arrangement for operations. For instance, if you have got a car at the north end of this yard up here, and have got, every time you want to move a car to the south end, to run that 3,000 or 4,000 feet and come back again, you have simply doubled up your operations compared with what they would be if you had a place where you could operate with tracks that were only 1600 or 1800 feet in length.

For that reason this space here, between Avenue G and Avenue F, and bounded on the north by 12th

Street—that strip is about 500 feet in width, and it is about 1600 feet in length.

Q. Are there any streets crossing this?

A. No streets crossing that property at all. The same is true of this property in here.

The warehouse business is a profitable business in connection with the railroads, and it is a factor that is strong in the development of railroads. We have a few warehouses along the old main line. Now our purpose and plan is to put our storage tracks mainly in here, that is between Avenue G and Avenue F and south of 12th Street, fronting on the river, and to bring our warehousing propositions out of this new area, the new fill that we have got to make.

Q. Have you not filled quite a lot already up here?

A. Yes, sir, we have got about 900 feet filled here.

Q. Do you cross any streets then?

A. No, not when we get out on to this. We have a perfectly clear piece of property, without any streets crossing it. Then my observation has been in the south that the closer to the water you can get your business for handling, the better it is for the people, and the better and stronger your development. With this frontage on the bay we come down to 12th Street here, and we get this piece of property practically for nothing, as a bald tract, because we have got, under our contract with the government, to dispose of the waste somewhere, and by putting it in here we make this whole property available for these yard purposes, if we do not use it for any other purpose. There is bound to be more or less commercial business always through that port, and it seems to me, under that contract at least, we are under some obligations to provide for the handling of any business that may offer there. The only thing that we have got to do in this fill proposition is to build a bulkhead wall on the outer side, and throw into that area all the material that we

dump out of this basin, and it will give us a strip practically equal to this strip down here between Avenue G and Avenue F, and fronting on the Miami River.

This property which we are at present using is not suitable for the purposes that I am now discussing, at all, without having added to it this area. We can do but little on the present dock except stub-end business. We have got one track that runs out onto that dock, but it runs on a hard, sharp curve, and one warehouse would practically finish the business on that dock, so far as the track room was concerned. We might possibly get in another small warehouse in connection with the one we have there now; but as I remarked in discussing this property before we left St. Augustine, we have applications all the time for warehouse privileges, and if there is any commerce here, those warehouse privileges are going to become valuable. If there is not any commerce, they are valuable so far as this town is concerned. This town has been growing far beyond any anticipation that we ever had, and to go out here on the main line within the city limits or within a reasonable distance of the city limits, it would cost us a great deal more, and whatever we put in out here would be just throwing away the other for our purposes, as a matter of fact.

Q. You testified at St. Augustine that there were two lots which you had tried to buy, but that the price was so excessive you could not buy them. Will you state what was the frontage of those two lots?

A. Did I say the price was excessive?

Q. You said the price was arge that you would not buy them. Do you remember what the frontage was?

A. Yes, three 50-foot lots, 150 feet deep.

Q. What were you asked for them?

A. Ten thousand dollars for the two lots on the corner.

Q. Was there much improvement on them?

A. Practically nothing. Some old stables I think, probably worth $400 or $500.

Q. If you had to move your yards, or place your yards, or these warehouse arrangements in any other portion of the city, would you not have to cross travelled streets?

A. Yes, sir, we could not get our yards anywhere in here, for 1600 feet, without crossing these streets.

Q. Now take this frontage here, if you had to go outside of the city to establish those yards, besides losing the water front, would it be as convenient to the business men of Miami as to establish them here? (Indicating.)

A. Not for this purpose, no, sir, because the business is very largely along 12th Street and Avenue D, and the end of this proposed line of fill comes very close to 12th Street.

Q. In regard to the Jacksonville Terminal Company, as I understand you own a fourth interest in it, in stock?

A. Yes, sir, a fourth interest in stock.

Q. Now if the sum each road pays in proportion to its number of cars and so forth is insufficient to meet the expenses, how is the deficit met?

A. It is met by each of the individuals in proportion to its ownership in stock.

Q. Then it is not a company for profit?

A. Not a company for profit. It is a company purely to provide us a cheaper terminal than we could furnish ourselves, if we were each of us operating alone.

Q. You have testified that quite a lot of these lands now used by . for right of way were contributed to the road by the people. Can you state roughly about how much money this company has ever paid out for right of way or for railroad purposes approximately?

A. Do you mean for land for railroad purposes?

Q. For land for railroad purposes.

A. Somewhere about $400,000.

Q. Have you ever made any estimate of what approximately it would cost per mile for right of way —the average?

A. In considering contracts that we have made in the last few years for construction of railroads, we have usually considered about $500 a mile as a fair estimate of what the right of way would cost, that is, 100 feet wide.

JUDGE HUNT: That is exclusive of station grounds?

A. Exclusive of station grounds. That is simply right of way.

MR. ST. CLAIR-ABRAMS: Is it not a fact that at many points on your road you could not buy a fair right of way for that $500?

A. If I were considering rebuilding the line through the present populated section, for instance, the Cassinda Valley, where we are constructing 125 miles to Okeechobee, with a 35-mile branch, in making up our figures with the people who are doing that work, we furnish the rail and they build the road for so much money. In that we included, in making our estimate, practically $500 a mile for right of way, but it is through a timbered section simply, with the exception of a very few miles on the north end which runs through an old orange section.

Q. Now taking up this question to Key West, is it not a fact that this idea of building to Key West prevailed in Florida long before Mr. Flagler ever went to that State with his operations?

A. I have heard it discussed and talked of by people, of course. I do not know what was there before Mr. Flagler went there, because I went there about the same time he did, or a little later.

Q. Was not the Jacksonville, Tampa & Key West Railroad Company started with the right to build to Key West?

MR. NEEDHAM: I do not know just the purpose of that. If it is simply for the purpose of establishing a general idea, I do not object to it; but if it is for the purpose of showing a grant, then I should want

to see the charter. I do not know what the purpose of this is. If it is simply to show that there was talk about a railroad to Key West, I shall not object.

MR. ST. CLAIR-ABRAMS: Counsel has brought this statute into question, as though it was something new. Now in 1880 and 1881 the Jacksonville, Tampa and Key West Railroad Company was chartered. I know all about it. The very name Jacksonville, Tampa & Key West shows what the idea then was.

JUDGE HUNT: Go ahead.

MR. ST. CLAIR-ABRAMS: I want to meet this cross-examination on this question.

JUDGE HUNT: Very well.

A. Yes, I am quite sure it was, as I recall the charter. I know that was the name of the concern, and I know that I was familiar with it, and I was counsel for those people for a great many years.

MR. ST. CLAIR-ABRAMS: Do you recall the fact that it was chartered in 1881?

A. No, I do not recall that.

Q. We can show that.

A. I know the Key West people had an idea at one time of making a donation of $500,000 to us if we built the road in there, but they found that they could not do it under the law, so they proposed to build $500,000 worth of wagon bridges and turn them over to us to operate. That was one of their propositions.

MR. NEEDHAM: When you say "us," do you mean this present road?

A. Yes, sir, the Florida East Coast.

MR. ST. CLAIR-ABRAMS: Do you recall when you were attorney for the Jacksonville, Tampa & Key West R. R., my submitting to Mr. Coleman a plan to shelve down from Titusville south to Bay Biscayne?

MR. NEEDHAM: I think we are going very far from the issues in this case, on re-direct examination, as to a matter of this kind.

MR. ST. CLAIR-ABRAMS: The sole purpose of bring-

ing up this statute is to make it appear as though this Key West project was something suddenly gotten up and never contemplated before. Your Honor will remember that the evidence shows a railroad, the Jacksonville, Tampa & Key West, which ran to Sanford, and then to Titusville from Sanford, and Mr. Flagler purchased that branch, from Titusville to Sanford. Now I want to show that before the East Coast Railway was thought of there were plans and propositions looking to the carrying out of the charter of the Jacksonville, Tampa & Key West on practically the same lines that Mr. Flagler subsequently built on, and thus to meet the clear purpose and intention of the bringing in of this statute. I do not think Dr. Needham should be permitted to do this, and then try to close our lips on the general proposition, as though it was a conspiracy on our part. If your Honor please, I have been a very active factor myself in the matter of building some railroads, because I was rather notorious unfortunately, and I have knowledge of these matters. I think we should be permitted to show that this was no conspiracy, no suddenly conceived idea.

JUDGE HUNT: You can abbreviate that by letting Dr. Needham state what the purpose of that testimony was.

MR. ST. CLAIR-ABRAMS: I should like to have the Doctor state.

JUDGE HUNT: The record is so filled up with argument and discussion that it is going to overwhelm you with costs. I was going to say that you can abbreviate this by having Dr. Needham state what the purpose of that oral testimony was, that is extrinsic of that statute.

MR. NEEDHAM: I do not quite think I should be called upon, while the witness is on the stand, to state the purposes for which I have asked questions. That is not customary.

JUDGE HUNT: It is fair to the Court and to the other side too.

MR. NEEDHAM: However, I do not particularly object to saying that we have been proving facts. That is no foundation whatever for proving dreams or hearsay evidence, or schemes that have been talked of and never have come to fruition. Now these are facts, not talk. This is what was done.

JUDGE HUNT: Yes, but you asked him with relation to the matters that led up to that. That is the point.

MR. NEEDHAM: It was your Honor or the Major who suggested a conspiracy. I have not suggested any conspiracy.

JUDGE HUNT: I used that word.

MR. NEEDHAM: I have no thought of suggesting a conspiracy. There is no conspiracy about asking for the privilege of building over a line, but it is an important fact here in this case, as I view it, to know when they commenced this extension in a definite way, not when they talked about it, not when the people thought they would like to have it, not when they considered it, but when they actually began effective work. Therefore I have asked him about the beginning of the engineering enterprise. I have asked him with reference to this act, without which no railroads could have been built over there, because the State of Florida owned the submerged lands, and they could no more have built a railroad across there without permission of the legislature than they could build into a town over the streets without an ordinance. They had to have it. Therefore no matter what was said, or what was desired, this was the beginning of a direct and positive action to build a railroad. It does not make any difference what went before that. I have not the slighest doubt that this matter was talked of in the State of Florida for years before.

JUDGE HUNT: The tenor of your questions was to

the effect that that legislation was the result of the action on the part of the East Coast people.

MR. NEEDHAM: Yes.

JUDGE HUNT: In other words, that that was a consummation of their prior talks—that act of the Legislature of the State of Florida.

MR. NEEDHAM: That was the taking of a step necessary to the building of this road, just the same as the surveys that were actually made; not talked about, but actually made. Now what I am after, and all I am after, is the facts which led up to the actual construction of the road.

JUDGE HUNT: With the disavowal of any purpose at all other than to fix the time of the actual commencement of the road, and that this was the concrete expression of a purpose to execute the construction of a railroad, I do not see that what you propose is material.

MR. NEEDHAM: I want to reaffirm that nothing is further from my mind than any intention on my part even to suggest a conspiracy. I was quite surprised when your Honor used that expression, because I was simply attempting, as I have the right, to establish the facts that showed the beginning of that railroad.

JUDGE HUNT: Why certainly, you have a perfect right in a court of equity, assuming that your pleadings are proper, even to show a conspiracy—

MR. NEEDHAM: I do not claim any such thing.

JUDGE HUNT: Even to show a conspiracy to go ahead and build a railroad, and its execution in what you might be pleased to call a chimerical scheme of building over the sea, for the purpose of showing no proper legal relation to the adjustment of rates to impose upon the shipper; but you disavow that contention. You simply say, as I understand it, that you desire to show the fact that they wanted to build a railroad, and that that statute was the authorization under which they built it.

MR. NEEDHAM: That is it.

JUDGE HUNT: As a matter of fact all your oral testimony might have been cut out, because the law speaks for itself, and acts done pursuant to the law become proper testimony. What led up to the passage of the law becomes irrelevant.

MR. NEEDHAM: I cannot quite agree to that, because it bears upon the action of the company itself. When did they begin to take definite action?

JUDGE HUNT: You are not impugning the action of the company in any way?

MR. NEEDHAM: Not impugning it at all. Why should I impugn it? The company built this road; but it is an important fact to know when they first began active operations to build this road. One of the things necessary to the building of the road was to get this permission to build over the submerged lands.

MR. ST. CLAIR-ABRAMS: No, sir.

MR. NEEDHAM: And the fact that the company does so may be offered in evidence as showing when they began an active campaign to build this particular line. I did not understand that there was a conspiracy, and I have not alleged wrongdoing in the building of this road, and I do not allege any such thing. "Conspiracy" suggests some wrongdoing. I do not suggest that at all. I simply say that they went ahead and built this road at a given time, and I undertake to establish the time when the railroad company began active and positive action toward this actual construction.

JUDGE HUNT: Your line of examination, following the interrogatories of Mr. Esterline yesterday, certainly left me under the impression that your purpose was to lay a foundation from which you could argue from which this was—to use language that came to my mind—

MR. NEEDHAM: I cannot possibly see how your Honor could draw the inference—

JUDGE HUNT: That is the way it looked to me yesterday, but as you have disavowed it, it seems to me to be irrelevant.

MR. NEEDHAM: The point I wish to make clear is that my wish is to establish the time when the railroad company began definite, positive action toward the actual building of this road. Is not that one of the steps in connection with that? I think so most clearly.

MR. ST. CLAIR-ABRAMS: But if you will permit me to state—and I ask that the record show it—it is not true that it was necessary to obtain this statute in order to construct this railroad.

JUDGE HUNT: That is a matter of law.

MR. ST. CLAIR-ABRAMS: But he is asserting it.

MR. ESTERLINE: You did obtain it.

MR. ST. CLAIR-ABRAMS: Permit me to go on. It seems to me that the purpose is to prevent me from putting into this record one of the most important facts, and I ask not to be interrupted. Under a law in the State of Florida in existence at that time, and still in existence, any railroad company had a right of way over all the lands owned by the State, for 200 feet on each side of its right of way.

MR. NEEDHAM: Explain why you got it—

MR. ST. CLAIR-ABRAMS: I decline to be interrupted. If the purpose is to leave your assertions on the record uncorrected, I propose to correct them right now.

The Government claimed that the lands under that water belonged to it. Under the general law of the State of Florida we had a perfect right to go on; but to prevent any dispute, and as I stated awhile ago to your Honor, primarily to prevent any hostile demonstrations against the construction of that road, we had this statute passed, for the purpose of removing any objections. Right here I may say, if your Honor please, that there was the most intense anger in Miami, because the very moment the road started to leave Miami, it was going to be built to Key West, and they thought the town was ruined. I went down there, and was amazed to find the feeling that it meant the ruin of the town. Now Dr. Needham is not correct in stating that that statute was a neces-

sity, or that we could not have gone on. It was solely for the purpose of preventing any attempt to stop the building of that road on to Key West, and to settle any disputed question as to the rights, and that was all.

JUDGE HUNT: I think your testimony is irrelevant. You may put it in, but my view would be that the objection of Dr. Needham is well taken, in view of his statement.

MR. ST. CLAIR-ABRAMS: I shall certainly object to his statement that we had to have that statute in order to build.

JUDGE HUNT: That is a matter of law. I would not attempt to pass on that, without all the laws of the State before me. Your contention resolves itself into this, that that statute became a work of supererogation.

MR. ST. CLAIR-ABRAMS: No, it was to settle any dispute.

JUDGE HUNT: If it was not necessary, there was no dispute to be settled.

MR. ST. CLAIR-ABRAMS: Oh, yes, on account of the feeling in Miami and elsewhere we heard some talk of enjoining any crossing from the mainland to Key West, and I voluntarily took it up. As Mr. Parrott has stated, it was not done by the East Coast Railway Company.

JUDGE HUNT: These are legal questions.

MR. ST. CLAIR-ABRAMS: The Board of Trade of Jacksonville was the medium through which the whole thing was gotten up and brought before the legislature. The question of taxation was, of course, an important factor—the assessment of taxes. As the statute itself shows, it gave no right of construction that did not exist before, and no right of way that did not exist under the laws of the State; but it settled all questions of dispute that might have arisen as to the right of crossing between those Keys.

JUDGE HUNT: Suppose a new railroad corporation was formed which was not then operating a railroad

within the State of Florida, and had undertaken to construct that railroad, would not that statute have been used—

MR. ST. CLAIR-ABRAMS: To prevent it?

JUDGE HUNT: To prevent it.

MR. ST. CLAIR-ABRAMS: No, sir absolutely not. A railroad company can do that to-day under the general laws of the State. A railroad can build to Cape Sable now, and build to Key West, and there is nothing to prevent it, because the State of Florida does not give a railroad any monopoly over any particular line. If we could buy the right of way or get it, you or I would have the right to parallel the East Coast Railroad, or any other railroad in Florida, from Jacksonville to Key West, and could get a charter under the general laws of the State to it, and there would be no possible means to prevent it. Mr. Hudson must know that I am stating the facts and the law of Florida.

MR. HUDSON: That part of it is correct.

MR. ST. CLAIR-ABRAMS: Accepting the statement of Dr. Needham, I will ask one question in regard to the law. Mr. Parrott, had you anything to do with the passage of that act?

Mr. Parrott: I had nothing to do with the act at all.

Q. Did you see that act before I brought it to you and showed it to you in your office?

A. No. When you showed it to me, it had some other things in it which the Legislature cut out, I remember.

MR. NEEDHAM: When was that?

A. Before the act was passed.

Q. You did see it before it was passed?

A. Yes, I should say I saw it before it was introduced.

MR. ST. CLAIR-ABRAMS: Was the Legislature in session when I brought in that act?

A. Yes, sir.

Q. Do you recall the Board of Trade appointing a committee to go up there?

A. Yes, sir.

Q. In reference to this pineapple business, is it not true that the rate for pineapples by water included Mobile and New York as well as New Orleans?

A. Yes, sir.

Q. You stated on yesterday that you went into the pineapple business for the purpose of protecting the growers on the line of your road?

A. Yes, sir; at one time.

Q. Originally?

A. Yes, sir.

Q. Is it not a fact that there has been a sort of rate war between the steamship companies and the connecting railroad lines, on the mainland, which resulted in rates that were destructive to your growers' interests?

A. It resulted in rates that were destructive to our growers' interests; yes, sir.

Q. That matter was all threshed out before the Interstate Commerce Commission, was it not?

A. Yes, sir.

Q. I think your Honor will find reference to it in one of these decisions, and an admission that the East Coast had spent lots of money to protect those Florida growers. You will find it in the decision which I propose to offer in evidence.

I wish you would get and file with this case the total number of acres of land that was obtained, with the short lines purchased by Mr. Flagler, and have it filed as part of your testimony.

A. I will.

Q. Is it not a fact, Mr. Parrott, that some of those lands that you got from these short lines you subsequently sold as low as 50 cents an acre?

A. Yes, sir.

Q. You have been questioned in regard to the donations—the lands which Mr. Flagler obtained.

Take, for instance, in Miami. Did he not, out of his own means, have to grade streets, build sewers, and furnish light?

A. Yes, sir.

Q. If there is anything you desire to state as the result of your cross-examination, I would like you to state it, without my specially interrogating you on it, in order to save time.

JUDGE HUNT: I think you probably have covered it, but I would like to ask you whether, in the operation of the line to Key West, between January 22 and, let us say, the 15th of March, you had ever had any appreciable amount of freight delivered to you at Key West from Cuba.

A. No, sir; we have not. The freight business we are looking to increase along about the first of May. But we have not been prepared to handle it, either with dock facilities or ships. We are proposing, on the first of May, to put in a freight ship, for the express purpose of handling freights. You see, our docks we have there at the present time are temporary; only built to carry us through the passenger season business; but by the beginning of May we have a ship chartered in there to do nothing but handle freight.

Q. Is there any appreciable increase in your passenger traffic in these last six weeks?

A. Yes, sir; a very marked increase in it.

Q. You could not determine that?

A. I could not tell just what the percentage has been.

MR. ST. CLAIR-ABRAMS: It has been over 400 per cent—

JUDGE HUNT: From Cuba?

MR. ST. CLAIR-ABRAMS: From Cuba.

JUDGE HUNT: My question was addressed to the expectation that relates to the Cuban business.

A. The Cuban business will hardly move much in the winter time. They begin their movement just about as our Florida movement begins. Of course

there is a constant interchange of business between Havana and New York, for instance, but the people who are leaving there for their holidays, or for the summer, do not begin to get out until the later season of the year. We have not got much of that business yet, but we will get it later.

MR. ST. CLAIR-ABRAMS: I take the opportunity also of calling your Honor's attention to the fact that before they can handle that business, it is necessary to establish rates by arrangement with connecting lines, and then get the authority of the Interstate Commerce Commission to put those rates into effect.

JUDGE HUNT: I understand that. I simply wanted to know whether they had been in any position to ask for that traffic; whether they had made any announcement of readiness to handle it and any enjoyment of expectation that there might have been as to the extent of it.

A. We expect to be ready to begin with that traffic on the 1st of May. But at the present time, as I said to you, we have not been able to take care of it, because our facilities have not been ready to take care of it.

I neglected to state on cross-examination that there was a line of steamers at the present time, plying between Key West and Miami, moving a considerable amount of business in there through the Miami port.

MR. NEEDHAM: What line is that?

A. Crosland's Line, I think it is. They handle probably 150 to 200 tons a week.

Q. How often does that run?

A. Once or twice a week.

Q. Is it a steamship line?

A. Auxiliary schooners, you know—a schooner line.

JUDGE HUNT: Where do they get their freight?

A. From Key West to Miami. It is principally business into Miami from Key West.

JUDGE HUNT: Well, they take freight from Miami to Key West—

A. Yes, sir.

JUDGE HUNT: And where do they actually receive that freight from Miami? The actual point of delivery at Miami?

A. It is on the river; not at our docks.

MR. NEEDHAM: What is that traffic? Of what does it consist?

A. It is merchandise.

Q. That is entirely between Key West and Miami?

A. Yes, sir.

JUDGE HUNT: There are about 20,000 people down there in Key West, are there not?

A. Yes, sir.

JUDGE HUNT: There must be quite a local business there?

A. Yes, sir.

MR. ST. CLAIR-ABRAMS: If the Court please, I have here—

MR. HUDSON: I would like to ask Mr. Parrott a few questions.

MR. ST. CLAIR-ABRAMS: I beg your pardon, Mr. Hudson.

MR. HUDSON: You have pointed out on the map a location where you expect to fill in and to build tracks for yard purposes. Will you designate that on the map, by streets, so it can be taken into the record (handing blue-print to the witness)?

A. To my recollection, it would extend between Seventh Street and Twelfth Street. We start at the end of our dock, which comes down here to Seventh Street (indicating on blue-print), and run about 1600 feet—I do not know just where that would stop, or the width of those blocks here—

Q. Approximately, it would be south?

A. That would be south, or nearly south, of Twelfth Street. That would be my recollection of it.

Q. Is that part of the Bay front, then, that you referred to as being too narrow for use for present

purposes, but it would be available when it was filled in from the dredging of the channel?

A. Yes, sir.

Q. What is the significance of these two red lines extending a considerable distance into the Bay from about the end of Eighth Street, about block 40?

A. That must cover the present dock; the present fill, I should say. Those lines I see, now; yes, sir.

Q. That you intend to use for yardage purposes also?

A. Yes, sir; so far as they—well, we will have to use it to go onto these present tracks. We will have to use a part of it; just the same as we are using it now.

Q. That is strictly for terminal purposes?

A. Yes, sir; landing our steamers there.

Q. Then, if those red lines indicate the location of the present dock, that limited area which you expect to fill in for yard purposes extends from Eighth Street to Twelfth Street?

A. Yes, sir; that starts on Eighth Street; Eighth to Twelfth Street, yes, sir.

Q. When was the Peninsular & Occidental Steamship Company incorporated, Mr. Parrott, approximately?

A. I should say in 1889 or 1900. I do not just remember.

Q. Up to that time, the railroad company was doing the steamship business?

A. Yes, sir. We had a steamship company, known as the Florida East Coast Steamship Company.

Q. That company—

A. Did the steamship business; yes, sir.

Q. Was that a corporation?

A. Yes, sir.

Q. Up to the time of the incorporation of the Peninsular & Occidental Steamship Company, that company was operating out of Miami?

A. Yes, sir.

Q. When was the railroad first extended below Miami? When did that work start?

A. My impression would be, it was in 1902.

Q. Do you know what part of 1902?

A. I do not; I do not recall.

JUDGE HUNT: You referred to the J. T. & K. W. charter, and to the fact that the name of that company was changed to the Tampa & Key West Railway. When that railroad was in operation, was it not making connection at Tampa by steamer from Key West?

A. No; it never ran south of Sanford. On that direct line it connected there with the South Florida & Tampa; and the South Florida connected at Port Tampa for Key West.

MR. HUDSON: Did the Jacksonville, Tampa & Key West, as operated, or by its connections, reach Tampa and make steamship connection with Key West?

A. Yes, sir; but it had a branch line which came to it by the absorption of the Palatka & Indian River, which ran to the Indian River, and a heavy part of its business at that time was through that line.

Q. I understand. I wish you would explain a little more fully. You remarked, at some point in your testimony, either this morning or yesterday, that it is cheaper to handle the Cuban pines than it is to handle the Florida pines. You made such a statement as that, did you not?

A. I did not mean to convey the idea that it was cheaper to handle the pineapple grown in Cuba than it was one grown in the United States, but I meant to say that the traffic from that point, coming to us as it did, in trainloads, it was much cheaper for us to handle than it was to handle our own pines, considering the facilities that we had to give and the manner and way in which we had to handle them. In other words, all of the collecting, all of the handling, all of the station business, had been done in Cuba, off

our line, and the pine had already paid for that handling in Cuba.

When you come to our line, all the picking up, all the stations, all the switching, all the making up of trains, was imposed upon us. Therefore, to us, it was cheaper to handle the pines from Cuba than the pines from our own lines.

Q. Well, the pines from Cuba had not come loaded in cars?

A. They had come loaded in vessels and had been delivered to us on board. That is, they are delivered on the track to us, and are loaded into cars by us.

Q. You have to load them in at Knight's Key or Key West?

A. Yes; Knight's Key or Key West.

Q. Well, your remark, then, would hardly apply to pineapples loaded into cars by ships along the main line—

A. Oh, yes, it would; because I am not only handling the picking up of that pine off from the platform, and putting it into the car, or allowing the men to do it, but I have got a hundred and one switches between the points of shipment and Jacksonville, before that freight finally gets in there. I have a pick-up train, and our growers would like to have me put on more pick-up trains to pick up that stuff in there that the Cuban pine does not pay a cent for.

Q. In other words, when the grower loads his pines into the car, you have to take the car at freight stations scattered all along?

A. Yes, sir; and then we have to take them to a point, or a junction, and make them up into trains. We have got a sidetrack to maintain at every little mile-post, practically, throughout the pineapple section, for those people. We not only take their pines in at those points and distribute them, but there is a saving to the shipper of the return freights—their fertilizer and crate material. We do not take any. We have it handled at those sidetracks, instead of having to handle their fertilizers and their

crate material, two, three, four and five miles. We give them the benefit of that handling. In other words, we handle in and out what we do not have to touch for Cuban pines.

Q. The point is, then, that the Cuban pines are made up into trains—

A. That is one feature of it; yes, sir. And then this other instance I am talking about: We do not have to do, for the Cuban pine, what we do for our own.

I would rather have, if it was a question of profit, a Cuban pine at eight or ten cents a crate less than our own pines on our own line.

Q. Referring to the price of two dollars an acre which you allowed to the Model Land Company for 256 acres of land, how does that price compare with the price of the Model Land Company?

A. The Model Land Company was operating on different bases. They sold land anywhere from—well, they sell their lands for 25, 30, 40, 50 cents and one dollar an acre; but it depends on the location and the character of the land. If we had lands in a body taking good, bad and indifferent, we would take much less for them than the prices mentioned. With our knowledge of the lands, we consider that the Model Land Company was making us a very good price; taking also into consideration that we had been holding those lands and paying taxes on them for years, and that they could get much more out of them than we could, and they had been a dead loss to us. In other words, our extension had eaten up practically all we had gotten out of them.

MR. HUDSON: That is all

JUDGE HUNT: Now you may go ahead with anything further, Mr. Abrams.

MR. ST. CLAIR-ABRAMS: I have here, if your Honor please, exhibits showing complete the entire evolution of this proceeding. I do not know to what extent your Honor will take judicial cognizance of the various processes, or whether you will require me to

put before you, as evidentiary matter, the entire proceeding from case No. 1168 before the Interstate Commerce Commission, with the contention of the respective parties, so as to advise this Court fully of the entire evolution.

For instance, if it is proper to be done, to enable this Court to consider this case from every standpoint, we desire to offer in evidence everything that pertains to this case and the East Coast Railway, from the original petition in 1168, the answers, the proceedings, the contentions of the respective parties, down to and including the decisions of the Interstate Commerce Commission, ordering that this reduction of rates be made; so that this Court may have a clear understanding of the entire transaction.

I have here originals and carbons and printed matter.

I would like to show the contention of the original petitioners, the same Florida Fruit & Vegetable Growers' Association, and to put in evidence the contention as it appears on pages 6 and 7 of the petition, to show that all they contended for at that time, so far as the Florida producing points were concerned, was a reduction of carload rates, based upon these "any quantity" rates. There were no carload rates at that time. We have that on pages 6 and 7. I would not want to offer this great mass of printed matter in evidence, because it would encumber the record as it refers to strawberries and many other commodities; but I have limited it to the paragraphs showing the contention.

Then there follows the decision of the Interstate Commerce Commission, declaring our rates reasonable, and refusing to reduce the rates, but making changes in rates as affecting other roads.

Then I wish to offer the supplementary petition filed by the Florida Fruit Growers' Association, which did not in any way affect our rates at all, but simply asked the Interstate Commerce Commission to compel the lines from basing points, Jacksonville,

for instance, which is our sole basing point, to points North and West, to reduce their rates uniformly along the line in compliance with the order. We were only brought into it for the purpose of affecting our car question at South Jacksonville.

And then, having the testimony all in, I propose to introduce in evidence the formal objection we filed to the Interstate Commerce Commission voluntarily assuming to fix rates in the absence of any petition, under their decision of 1908, and our answer, which we filed subject to those objections. I think the Court holds that I need only refer to them, without putting them in evidence, in the briefs or argument. I propose to do so, and will not offer this testimony; but I am rather apprehensive—

JUDGE HUNT: I think you would have to offer them.

MR. ST. CLAIR-ABRAMS: Very well, sir.

JUDGE HUNT: There is no judicial notice taken of the history of the proceeding, step by step, before the Commission.

MR. ST. CLAIR-ABRAMS: I think so, sir.

MR. NEEDHAM: I should object to this, on the same ground, because we are supposed to be trying one case, and not three; and I cannot consent either to the introduction of segregated portions of a pleading, or the whole pleading. I have not been over it recently, of course, and I cannot tell just what portions of these pleadings may be contained there, and therefore I cannot consent to any segregation of items out of it for the purpose of showing what the issues were.

In the second place, I want specially to object to this, on the ground that whatever the decision of the Commission may have been at a given time, there can be no claim, it seems to me, that they are bound by that in reconsidering a matter in a subsequent proceeding. If that be so, why, then, all regulation ends when it is once acted upon. I do not think they exhaust their powers in that way.

JUDGE HUNT: Of course I would admit it, over the objection of counsel for the Interstate Commerce Commission.

MR. ESTERLINE: Are they certified?

JUDGE HUNT: I assume, of course, that they will be in proper form.

MR. ST. CLAIR-ABRAMS: I propose to have them all certified as correct, by the Secretary of the Interstate Commerce Commission.

JUDGE HUNT: You have got a great big record there.

MR. ST. SLAIR-ABRAMS: It is well settled that a party is not compelled to offer everything, but may offer only what he considers relevant to his case. The other side has a right to offer the balance. But I have tried to confine the evidence to what I consider is the real relevant matter brought before this Court.

Counsel is mistaken in saying these are three cases, because there is only one case—1168; and our complaint is that 1168 was finally settled and solemn determination made and decision rendered and recorded, and that even without any complaint at all against us, the Interstate Commerce Commission assumed to reopen the whole question and make new rates without a word of evidence showing that that which they declared was reasonable had become unreasonable; without a word of evidence to show that there had been any change of condition upon which they based the original reasoning; and that record is here, and it seems to me it is necessary to enable this Court to understand the whole situation, because it is a series of supplemental petitions.

JUDGE HUNT: You had better specify what portions you wish to put in. It is incumbent upon you to get it in, Major, and then if the other side desire to object further, of course they may.

MR. ST. CLAIR-ABRAMS: In doing so, I am stating, if your Honor please, that what I propose to do is to take out of these papers what I consider relevant, and get the Secretary of the Interstate Commerce

Commission to certify that so much of it is correct as appears from their records. Then, if counsel desires to add anything more, why, of course, I cannot prevent counsel from adding it if he thinks I have omitted something which would throw light on the whole situation.

MR. ESTERLINE: What is it?

MR. ST. CLAIR-ABRAMS: It is everything.

MR. ESTERLINE: Is it a document? (After examining document.) Why, it is a brief.

MR. ST. CLAIR-ABRAMS: That is part of the contention.

MR. ESTERLINE: He is going to file a brief, your Honor.

MR. ST. CLAIR-ABRAMS: I am going to show the contention. I am going to put in everything—counsel laughs—but I know what the contention was, and here it is, on page 6 of the brief.

JUDGE HUNT: Why don't you take your pencil and mark out such portions as you desire, and then have a certificate, as you think necessary, appended to it, with this from the original brief, and put them in?

MR. ST. CLAIR-ABRAMS: That is what I propose to do; but there is a large mass of matter here, and I have got to, as I say, collect it.

JUDGE HUNT: You can do that later.

MR. ST. CLAIR-ABRAMS: When I have done that, I put it in, subject to the objections which have been raised; but until I had a ruling from your Honor, it would have been a waste of time and an expense to have gone to the Interstate Commerce Commission and asked them to verify what my associate will advise you has already been done—that he had gone over the entire record to ascertain that it was all there in the Interstate Commerce Commission's files, which it is. I think it is very important.

That is our protest; there is my correspondence with the Interstate Commerce Commission, protesting against this action, challenging their authority; and I think that all should be placed in the posses-

sion of the Court, as giving the Court the whole history of this case, because it is all one case.

JUDGE HUNT: Make your excerpts as you desire, and then you can, between now and tomorrow, get certificates.

MR. ST. CLAIR-ABRAMS: I propose to stay over for that purpose.

JUDGE HUNT: And offer them as at this time, and they can be objected to, and subject to the right of counsel for the other side to file such statements as they please.

MR. ESTERLINE: Did you argue that case orally?

MR. ST. CLAIR-ABRAMS: Orally; in print; by protest; from beginning to end. And the record of testimony gone in here shows my repeated objections at that time, at that hearing, on the ground that we had not been summoned there for any such purpose; and I objected so often that Mr. Glasgow, representing the Florida Fruit & Vegetable Shippers' Association, got up, as the record will show, and in plain terms declared that the Association had no purpose or intention to disturb the Florida East Coast rates to basing points.

Subsequently I again objected, and the record shows that Mr. Prouty, who was presiding, repeated practically the language of Mr. Glasgow, saying that the Florida East Coast rates would not be disturbed, and we were absolutely assured that it would not be done; and they were disturbed.

JUDGE HUNT: Have you any other witnesses, Major?

MR. ST. CLAIR-ABRAMS: No, sir. I simply call your Honor's attention to the additional matter of these figures that we have been instructed to call for, and to which I call your Honor's attention, that we desire to put in evidence before the Examiner or Master that your Honors may appoint.

MR. NEEDHAM: What is that last remark?

MR. ST. CLAIR-ABRAMS: Before any Examiner or Master that the Court may appoint to conclude the

taking of testimony in Florida, which I understand Mr. Hudson—

MR. NEEDHAM: Do I understand that you do not close your case?

MR. ST. CLAIR-ABRAMS: We close, except as to those matters which have been testified to before this Court at this hearing, which require, for instance, to put in the valuations of those additional lands; to put in what you have called for, which is also testified to, as to the—Well, that has practically been put in by Mr. Kirtland's testimony.

The only additional testimony we need to put in is the testimony of the contractor as to the difference in the cost of grading at this time compared to what it would have cost in 1907.

If your Honor will examine the record, you will find that Elliott and Huger made an estimate of 20 cents a cubic yard. But they have gone out of active business, because Elliott has retired. They understand it has increased, but to what extent they did not investigate.

JUDGE HUNT: Do I understand you want to put in testimony on that point, in addition to the real estate matter?

MR. ST. CLAIR-ABRAMS: Yes, sir.

JUDGE HUNT: The real estate matters were understood, but the grading is a new matter.

MR. ST. CLAIR-ABRAMS: The grading is one point we wanted to put in evidence. We expected Mr. Long to be present, but he was off in the North somewhere, and he only returned on Saturday, and he said it was utterly impossible for him to be present.

JUDGE HUNT: Do you wish to put in testimony on those two points? The real estate, of course, is understood; the grading, of course, is a novel matter.

Some statements are to be filed; statements by Mr. Kirtland and a statement by Mr. Parrott.

MR. ST. CLAIR-ABRAMS: Yes, sir; to put in the actual figures. You (addressing Mr. Hudson) called for some of those.

MR. NEEDHAM: It does not need any Commissioner or Master to take that testimony. That comes in as a part of what was understood when we were at St. Augustine. I understood at that time that Mr. Hudson might want to put in some testimony. I understand from Mr. Hudson now that he does not; and therefore, so far as we are concerned or the interveners are concerned, there is no occasion for the appointment of a Master to take any testimony; and I did not understand that this hearing was to be continued indefinitely, but that this case was to be set down and tried. I am ready to put in our own testimony that we want to put in here, and we will be ready after the intermission.

JUDGE HUNT: Go ahead at 2 o'clock, then, with your testimony. We do not want to appoint a master to take up that matter of grading—

MR. ST. CLAIR-ABRAMS: If counsel will agree to this, that grading in Florida at this time is from 24 to 26 cents a cubic yard—you could not get it done at 20 cents—if you agree to that, that is all I want. Mr. Long will testify that he would not take a contract to grade for less than 24 cents.

MR. NEEDHAM: All we need to do, then, is to confer and agree that if Mr. Long were here he would testify to that effect.

JUDGE HUNT: That obviates the necessity for the appointment of a master, and we can go ahead at 2 o'clock.

MR. ST. CLAIR-ABRAMS: There is no issue on the pineapple rate at all, not a question at issue on the pineapple rate, absolutely; because we have put into effect the rate that they asked for and obtained from the Interstate Commerce Commission.

Now, before this case can be argued or this Court can dispose of it, there will not be a vegetable shipped out of Florida. The next shipment is pineapples; then, nothing until the last of November, when the citrus fruits begin.

JUDGE HUNT: You may take that up with the other

side. That is something for the entire Court, with which I have nothing to do.

(Whereupon, at 12:25 o'clock, p. m., a recess was taken until 2 o'clock, p. m.)

After recess.

Tuesday, March 26, 1912.

THE COURT: Gentlemen, you may proceed.

MR. HUDSON: Dr. Needham stated to your Honor this morning that Mr. Boggs and I have decided it would not be necessary to put on witnesses on the question of valuation. That is my own opinion, but Mr. Boggs represents clients who are really the most interested in this matter, and I have wired him that that is the view I entertain and also the view of counsel, and I apprehend that is our final decision; but I do not care to bind ourselves to that until I hear from him.

THE COURT: Certainly, Mr. Hudson.

MR. HUDSON: I have wired to Jacksonville for a witness whom we expect to use, who will be here I presume not later than noon tomorrow.

There is one other matter to which I desire to call your Honor's attention at this time. In answer to a question of your Honor this morning, Major Abrams made a statement of the law of Florida to which I assented in part, and it has been suggested that probably my assent was construed as extending further than I intended. I simply meant to assent to his statement that under the law of Florida there is nothing to hinder any road paralleling another. That much I concede.

THE COURT: Very well. You may proceed, Dr. Needham.

MR. NEEDHAM: I will call Mr. Burnside.

CHARLES D. BURNSIDE.

Charles D. Burnside, a witness called by and on behalf of the Interstate Commerce Commission, was thereupon duly sworn and is examined.

MR. NEEDHAM: What is your full name?

MR. BURNSIDE: Charles D. Burnside.

Q. Mr. Burnside, what is your occupation?

A. I am Examiner for the Interstate Commerce Commission.

Q. Of accounts?

A. Yes, sir.

Q. How long have you occupied that position?

A. Since October, 1908.

Q. Before that what was your occupation?

A. I was with railway companies in accounting service for some eighteen years.

Q. Your business has been wholly that of accounting and examination of accounts?

A. Since that time, yes sir.

Q. Have you made up a statement of operating revenue of the Florida East Coast Railway from Homestead to Knight's Key for the fiscal year ending June 30, 1911, from the reports and books of that company?

A. I have.

Q. How was that account made up with reference to the whole year? Was it upon an examination of the accounts for each month or an examination of the accounts for specific months as illustrative or typical of the whole?

A. I used different methods in the different classes of revenue, depending upon the information given by the record and the form in which I found it.

Q. Look at the statement shown you and state whether or not that statement was made up by you and whether it was made up in the manner indicated on the statement itself?

A. Yes, sir, it was made by me and in the manner shown on the statement itself.

Q. Those figures can be corroborated by the Accountant of the road from the books and reports?

A. Yes sir.

Q. I offer this statement as exhibit No. 1.

MR. ST. CLAIR-ABRAMS: I wish to state an objection.

We object to the introduction of this evidence on the following grounds:

First, that the local traffic between any two points on the line of the railroad is not a proper matter of evidence, since the entire earnings of the line are the method to be considered both by the Interstate Commerce Commission and by this Court.

Second, this evidence is not applicable to the issues in this case. If the total revenue between Homestead and Knight's Key is $97,787.94, then, if your Honor please, the question really at issue is what is the enormous sum from Homestead back to Jacksonville that this extension has brought to the balance of the line? Consequently, this figure is misleading. It is an attempt to make it as though it were a separate and distinct railroad, a separate and distinct line of road, and as if the railroad from Jacksonville to Homestead was an entirely different organization, and this road were being operated by an entirely different company.

I submit it is not relevant to the issues in this case.

THE COURT: It may go in, subject to your objection.

(The statement thus offered in evidence was thereupon marked "I. C. C. Exhibit No. 1, March 26, 1912.")

MR. NEEDHAM: Have you made another statement or computation from the books and reports of the company showing the income from lines north of Homestead for the fiscal year ending June 30, 1911?

A. Yes, sir.

Q. Look at the statement marked No. 2 and state whether or not that is the statement made by you and whether or not it is made from the records and

entries in the books of the Florida East Coast Railroad as a basis.

A. Yes, sir, it is.

Q. And it is made up in the manner shown in the first exhibit and as shown upon this report?

A. Yes, sir; the items shown in the first exhibit were used in arriving at the result shown on this one—if that is the question.

Q. So far as the earnings south of Homestead are concerned, you have used the results of the figures in exhibit 1?

A. Yes.

Q. So far as the earnings of the company are concerned as a whole, you have taken those from the reports of the company for that year?

A. Yes, from the annual reports.

Q. And this is a true computation, based on those figures and made up in the manner you have stated?

A. Yes, sir, I believe it to be so.

Q. I offer this in evidence as Exhibit No. 2. It is possible your Honor may not at first glance—it appears clear enough, but your Honor at first glance may not get the purport of this evidence. The earnings south of Homestead are made up by taking the books of the company and going over them in detail, taking the shipments from each station on the line south of Homestead to any other point upon the road—

THE COURT (Interposing): Any other point on the road, whether north or south?

MR. NEEDHAM: It did not south of Knight's Key in this year; but either two or three points south of Homestead. This takes earnings south of Homestead.

The pertinency and the only pertinency of this testimony, let me say, is as bearing upon the allegation of the petition as to the earnings of the extension.

MR. ST. CLAIR-ABRAMS: I object to this, your Honor, on the same grounds, and in addition that the petition sets up that the extension begins at

Miami while this paper is based entirely from Homestead and is not meeting either the allegation of the petition or the admission in the decision of the Interstate Commerce Commission of which we complain, and in that decision they recognize Miami as the starting point of the extension.

In considering the earnings of the road you cannot partition the road so as to take away one part of its main line and consider that part of the road arbitrarily.

Next, we object because this is based on an arbitrary attempt upon the part of the respondent and intervener to disintegrate the main line, and consider it as terminating at Homestead when the main line includes and in fact terminates at Key West, or did at that time terminate at Knight's Key.

I ask your Honor to rule on the objection.

THE COURT: The statement may go in subject to your objection.

(The statement referred to was thereupon marked "I. C. C. Exhibit No. 2," and is filed herewith.)

MR. NEEDHAM: Mr. Burnside, have you made a comparison of statistics of the Atlantic Coast Line, the Seaboard Air Line, the Southern, and the Florida East Coast Railway in southeastern territory as reported to the Interstate Commerce Commission in the annual reports for the fiscal year ending June 30, 1911, giving the ratio of operating revenue to investment in the road and equipment?

A. I want to explain that in arriving at the ratio of operating revenue to investment, I was supposed to make the computation from figures given in the report; but my computation resulted in these figures.

Q. That is to say, your computation is based upon the annual reports?

A. It is.

Q. Of these companies?

A. Yes, with the exception of the Florida East Coast Railway, which is explained in the note at the foot of the statement.

Q. Is this statement correct as to the computation based upon the reports as you have stated?

A. I believe it to be so, yes, sir.

Q. I offer this in evidence as Exhibit No. 3, your Honor.

MR. ST. CLAIR-ABRAMS: We object to this on the following grounds:

Comparisons of statistics between the operating companies other than the East Coast Railway do not afford a proper method of ascertaining the situation involved here. The basis upon which the witness has made his figures ignores entirely the fact before this Court now that $30,000,000 of property is involved, and donations were made at the time which would bring up the value of the road to Homestead to over $20,000,000, and yet this is based entirely on $16,314,133 investment. With regard to the other roads there have not been placed before this Court facts upon which it can determine whether or not this comparison is reasonable or unreasonable, or which afford this Court any fair test in regard to the matter.

THE COURT: It may go in subject to your objection.

(The statement referred to was thereupon marked "I. C. C. Exhibit No. 3," and is filed herewith.)

MR. NEEDHAM: Have you made a statement of the earnings per ton per mile, at the new rates, ordered by the Interstate Commerce Commission, on shipments of vegetables during the fiscal year ending June 30, 1911, based upon Exhibit 14 as it was corrected in the evidence at St. Augustine?

A. Yes, sir.

Q. Is this the statement made by you?

A. It is.

Q. Is it a correct computation?

A. I think it is, yes, sir.

Q. What does this show the revenue to be per ton mile at the new rates for vegetables?

A. 2.202 cents.

Q. Per ton per mile?

A. Yes.

Q. I offer this statement in evidence as Exhibit No. 4.

MR. ST. CLAIR-ABRAMS: We object on the ground it is utterly irrelevant and is not based upon the transportation rates authorized or ordered by the Interstate Commerce Commission. These rates are based upon so much per crate of 50 pounds to the basing point at Jacksonville, and to base it upon the per ton per mile basis is misleading and does not take into consideration the material fact that this is a perishable product, the special provisions made to handle it, the high rate of speed, the greater expense of transporting it to the basing point of Jacksonville, etc. I cannot understand how a revenue per ton per mile is applicable to the issue presented in this proceeding; and therefore I object to the introduction of this statement.

An illustration of the relevancy of this testimony is to be found in this: If you take it by crates, which is the basis upon which we charge, our revenue, instead of being $380.792, would only be about $371; yet he gets down to a figure and gives us a revenue which we could not get at the lowest rates that were ordered, which we could not obtain, by bunching the whole thing together and then giving the result of the average per ton per mile. This revenue would of itself show a loss of $87,000, but as a matter of fact, the loss is over $90,000, because we charge by the crate and collect by the crate.

THE COURT: The statement may go in subject to your objection.

(The statement referred to was thereupon marked "I. C. C. Exhibit No. 4," and is filed herewith.)

MR. NEEDHAM: Have you made a statement regarding the earnings per ton per mile at the new rate ordered by the Interstate Commerce Commission on shipments of citrus fruits during the fiscal year ending June 30, 1911, based upon Exhibit 15, attached to the petition in this case, as corrected in the evidence at St. Augustine?

A. I have.

Q. Is this the statement which I now show you?

A. It is.

Q. Is that statement correct?

A. So far as I know.

Q. What does this show the revenue per ton per mile for citrus fruits to be at the new rates?

A. 2.116 cents.

Q. Have you also computed and stated upon this exhibit the totals of the revenues per ton per mile on vegetables and citrus fruits united, as shown on this exhibit, and in the one preceding it?

A. I have.

Q. What does that show?

A. 2.178 cents per ton per mile.

Q. I offer that statement in evidence, your Honor.

MR. ST. CLAIR-ABRAMS: The same objection is offered as to the others, your Honor.

THE COURT: It may be admitted subject to your objection.

(The statement referred to was thereupon marked "I. C. C. Exhibit No. 6," and is filed herewith.)

MR. NEEDHAM: Did you make a computation as to the freights originating between Miami and Homestead during this same year?

A. Originating between Miami and Homestead?

Q. Originating at or destined to points between Miami and Homestead.

A. Yes, sir.

Q. Have you that statement?

A. I have.

Q. Just give us the results of it.

A. This statement shows the earnings of the line between Miami and Homestead.

Q. For what year?

A. For the fiscal year ending June 30, 1911, computed in the same manner as is described under the first item in the statement marked Exhibit No. 1.

Q. Give the results.

A. $38,773.99.

Q. And the earnings below that from Homestead?
A. $8,411.29.
Q. And the earnings of the entire line.
A. $2,051,534.05.

MR. ST. CLAIR-ABRAMS: We offer the same objection to this, of course, your Honor.

THE COURT: It may be admitted subject to your objection.

MR. NEEDHAM: These are simply the figures; I do not know that it is necessary to encumber the record with this statement.

MR. ST. CLAIR-ABRAMS: Has the witness stated the result?

MR. NEEDHAM: Yes.

THE COURT: Then it is not necessary to put the statement in.

MR. ST. CLAIR-ABRAMS: I did not offer my objections when the questions were asked, because I thought this paper would be put in evidence. When he read these figures, I supposed the statement would be put in.

MR. NEEDHAM: I can put it in if you desire.

MR. ST. CLAIR-ABRAMS: I should prefer that you do that.

THE COURT: It may go into the record subject to counsels' objection.

MR. NEEDHAM: I have only the one copy, your Honor, but I will ask the stenographer to incorporate it in the record so we may each have a copy.

THE COURT: Very well.

(The statement referred to is marked "I. C. C. Exhibit No. 7," and is in the words and figures following, to wit:)

"I. C. C. EXHIBIT No. 7."

STATEMENT OF FREIGHT EARNINGS FOR YEAR ENDED JUNE 30, 1911, PRORATED ON A TWO MONTH AVERAGE BASIS, SHOWING CONTRIBUTED AND EARNED REVENUE BY STATIONS.

Jacksonville, Fla., to Miami, Fla.
Miami, Fla., to Homestead, Fla.
Homestead, Fla., to Knight's Key, Fla.

Total Freight Revenue for year ended June 30, 1911		$2,150,048.31
Less Revenue on Company Freight (In Red)		98,514.26
Total Commercial Freight Revenue.		2,051,534.05
Amount of Revenue *contributed* on basis of:		
Two months average from Stations, Jacksonville to Miami	87.41%	1,793,245.91
Two months average from Stations, Miami to Homestead.	11.87%	243,517.09
Two months average from Stations, Homestead to Knights Key	00.72%	14,771.05
Total	100.00%	2,051,534.05
Amount of Revenue *earned* on basis of:		
Two months average by Stations, Jacksonville to Miami	97.70%	2,004,348.77
Two months average by Stations, Miami to Homestead.	01.89%	38,773.99
Two months average by Stations, Homestead to Knights Key	00.41%	8,411.29
Total	100.00%	$2,051,534.05

Cross-examination.

MR. ST. CLAIR-ABRAMS: From what book did you get these figures?

A. I went to various books in the auditor's office.

Q. In St. Augustine?

A. The records are kept in different books depending upon the classes of revenue.

Q. All the books were placed at your disposal, were they not?

A. They were, yes, sir, very freely.

Q. There was no possible objection to your using any of them?

A. None whatever.

Q. Let us take these figures and examine them. Did you compute these figures by the rates per crate in arriving at that figure?

A. I took the revenue as shown in the exhibit, Mr. Abrams, with some corrections made on account of errors in extensions.

Q. We agree on those corrections, yes. How do you account for the difference? I think the correction made the losses $121,000, while your figures make a loss of only $118,000. How do you account for that?

A. This is the loss I think on both statements, Mr. Abrams.

Q. As it stands now the losses will only be $118,000.

MR. NEEDHAM: That is as to both citrus fruits and vegetables?

A. I do not know where you got this figure, so I cannot explain it.

MR. ST. CLAIR-ABRAMS: We agreed in St. Augustine to reducing it from $133,000 to the extent of about $12,000. That is what we agreed on in St. Augustine.

A. The exact figures are shown in the statement.

Q. Very well; but still, from your examination of the figures then at the reduced rates there would be

a loss of nearly $120,000 over the same amount of stock, would there not?

A. Assuming the statement to be correct, there would be, yes, sir.

Q. In computing and ascertaining the statement of freight earnings marked Exhibit No. 7, from Miami to Homestead, or from Miami to Knights Key, did you figure out the amount of revenue that the line from Homestead to Jacksonville or from Miami to Jacksonville secured by reason of this business originating on the extension?

A. Not as exactly as this. I made a general statement.

Q. Have you got it here?

A. I think I have.

Q. Let me see what it is.

A. The figures are a part of this last statement marked Exhibit No. 7. Does that answer your question?

Q. I want to know what it is.

A. What is the question, please?

Q. How much revenue from this freight did the main line get from Homestead to Jacksonville or from Miami to Jacksonville on this freight that went over the extension?

MR. NEEDHAM: That does not purport to show any such fact as that. It simply shows the earnings per mile of freight that originated at or which was destined to those stations. It does not show the earnings of the balance of the journey.

THE COURT: The witness is the best person to answer that, if it does not show it.

MR. NEEDHAM: But I have a right to state an objection, I think, to the form of the question which assumes a fact that is not proven.

MR. BURNSIDE: This statement shows the earnings or revenue contributed by the line Homestead to Knight's Key as $14,771.05.

MR. ST. CLAIR-ABRAMS: But it does not show how much the balance of the line got from the same freight, does it?

A. Yes, sir.

Q. How much did it get?

A. $14,771.05.

Q. Is that what it got all the way to Jacksonville?

A. Yes, sir.

Q. Let us take Miami. How much did the main line get from Miami to Jacksonville as the result of the business from Knight's Key to Miami?

A. It would be the sum of these two amounts, $243,517.09 plus $14,771.05.

Q. That is $258,000 the main line got. Is that it?

A. Yes, sir,—gross revenue. That does not take into account the expenses, of course.

Q. Oh, no. That is the benefit the main line got from that extension in freight.

A. Gross freight revenue.

Q. Does that include the freight paid by the extension or to the extension by the company itself?

A. It does not.

Q. It excludes that?

A. It does.

Q. Does that include in any way the passenger business?

A. No, sir; this is freight only.

Q. Have you ascertained what benefit the main line got from the passenger traffic?

A. You mean the amount contributed by the extension?

Q. Yes. For instance, I mean if it is in round figures $15 from Jacksonville to Knight's Key, and $11 from Miami to Jacksonville, which would give to the extension $4 and $11 to the balance of the line, how much has that extension contributed to the main line of passenger traffic?

A. I do not think I have the figures.

Q. You have not figured that out?

A. It is my impression I have the figures somewhere, but I do not see them here.

Q. This is for the fiscal year ending June 30, 1911?

A. Yes, sir.

Q. Then on freight alone the line from Jacksonville on got $248,289.14. Is that correct?

A. That was contributed by the line from Miami to Knight's Key.

Q. The whole extension gave the main line that much business? Is that correct?

A. As I stated, this is the line from Miami to Knight's Key.

Q. Then that does not include the freight that the railroad itself had to pay to the extension?

A. We do not regard that as freight revenue.

THE COURT: I notice in all your accounts, Mr. Burnside, you use "revenue" and then you use "income." You use "income" in the narrow sense and "revenue" is all the money received?

A. No, sir; on the contrary. "Revenue" is the narrower term. "Income" takes in not only the operating earnings, but the item of interest and taxes and matters of that kind in addition. An income statement is supposed to take in not only the earnings from the actual operation, but income upon investment and matters of that kind.

THE COURT: Do you classify your accounts in that way?

A. Yes, sir.

THE COURT: And use those terms in that sense?

A. Yes, sir.

MR. ST. CLAIR-ABRAMS: While you do not consider the business of the road over the extension as part of its revenue, nevertheless in making this comparison showing gross earnings of $4,183,384, you take that as a basis, although that embraces the same items, does it not?

A. It is deducted, as you will see.

Q. But you also deduct $97,787 from the traffic south of Homestead?

A. Yes, sir; I was arriving at the income north of Homestead.

Q. How did you get this south of Homestead?

A. That is shown on statement No. 1.

Q. Does that include passengers as well as freight?
A. It does.
Q. That is, this $97,000?
A. Yes, sir.
Q. How many miles is it from Homestead to Knight's Key?
A. About 82 miles.
Q. Did you ever figure out what the earnings of the road would be on vegetables between those two stations (indicating), a distance of over 100 miles?
A. I have not, no, sir.
Q. Have you looked over this table (showing the witness a table)?
A. I have.
Q. Do you not see that for over 100 consecutive miles the entire shipments of vegetables are very small and the amount is almost negligible?
A. Yes, there appears to be a less amount from those stations, quite decidedly less.
Q. Have you ever figured up that for over 100 miles of road out of a total of 2,368,504 crates of vegetables, less than 17,000 originated in five consecutive miles of that road?
A. No, sir, I have not made that computation.
Q. In making this comparison with other rates, did you examine the character of the traffic and material handled by the other roads?
A. I did not.
Q. You say you have been in the railroad business?
A. I have been in the employ of railroad companies for a long time.
Q. Do you not know that such things as phosphate rock, timber, lumber, and naval stores and cotton are all handled at considerable less cost than perishable freight? Is not that a fact?
A. I could speak as an expert, but that is a matter of common understanding, yes.
Q. And without regard to the cost of handling or expense, you arrived at these results?
A. Yes, sir, that is correct.

Q. Did you consider the difference in the percentage of passengers carried by the Atlantic Coast Line, the Seaboard Air Line and the Southern Railway as compared with the total business and the percentage of passengers carried by the Florida East Coast Railroad as compared with its total business?

A. I took the information from the reports indicated in that statement.

Q. You did not consider anything but the total revenue and total expense? Is not that a fact?

A. The statement includes other items. I made the statement in a general way as covering all the items in the statement. I went to the reports and made the computation and did not aim to go any further than those figures there would require.

Q. Is it not a matter of common knowledge that this non-perishable stuff is carried and can be carried for considerably less than perishable material?

A. Generally speaking, I should say so, yes, not speaking as an expert, but from general railway knowledge.

Q. Mr. Burnside, did you take the trouble to examine the total tonnage and character of the tonnage carried by these different roads, the Florida East Coast, the Atlantic Coast Line, the Seaboard Air Line and the Southern Railways?

A. No, sir, I have not examined those features.

Q. Were you aware of the fact that one single item, phosphate, carried by the Atlantic Coast Line, is nearly three times the entire tonnage of all kinds on the Florida East Coast Railway?

A. I am not so aware, no, sir.

Q. Regardless of the character of the business, you just took the figures as they appeared before you and made these results?

A. I did.

Q. That is all.

(Witness excused.)

MR. NEEDHAM: Your Honor, I want to introduce from the annual statistical report of railways a fact appearing on page 59 thereof, that the average receipts per ton per mile of Group 5, in which the Florida East Coast Railway is included, is .802 of one cent per ton per mile.

MR. ST. CLAIR-ABRAMS: I object to that. In the first place, that takes the entire railways of the United States.

THE COURT: No; he says particularly Group 5.

MR. ST. CLAIR-ABRAMS: The entire railroads of that Group, then. That would not be a just comparison at all. You have got to take what Group 5 consists of and then apply it.

MR. NEEDHAM: That is a matter of argument.

THE COURT: Is that all you want to introduce, Dr. Needham?

MR. NEEDHAM: No, I have one other item.

THE COURT: Go ahead and get through with your offer.

MR. NEEDHAM: I also offer the item on the same page showing the average rates per ton per mile for the United States to be .753 of one cent per ton per mile, as shown by this same report.

MR. ST. CLAIR ABRAMS: I object to that on the same ground as heretofore stated.

THE COURT: I am not familiar with this sort of evidence, let me inquire what are these statistics and by whom are they compiled?

MR. NEEDHAM: By the Interstate Commerce Commission. It is the statistical annual report to Congress of the Interstate Commerce Commission.

THE COURT: A governmental report?

MR. NEEDHAM: Yes, and by statute made evidence, but I do not want to put the whole book in evidence.

THE COURT: It may go in subject to the objection.

MR. ST. CLAIR-ABRAMS: I offer the further objection that these estimates are based upon conditions existing upon practically every road in the United States except this one. This one road stands almost

alone in the fact that it has practically no non-perishable low-grade freight produced on its line, which would necessarily reduce enormously its receipts per ton per mile.

THE COURT: Of course, that is a matter of argument going to the value or the weight of the evidence, but it appears to me to be competent for the purpose of admission. Its weight is another matter.

MR. NEEDHAM: In this connection, I want to call attention also to a certified report of the Florida East Coast Railway, which was introduced in evidence in this case, at page 93, which shows that the average rate per ton per mile on that road is 1.77 cents per ton per mile.

MR. ST. CLAIR-ABRAMS: We have no objection to that.

MR. NEEDHAM: Mr. Parrott, as your Honor will remember, was to furnish a copy of the charter. He says that has not come. With that, so far as the Interstate Commerce Commission is concerned, and the introduction of the report and the order in this case which I desire to have appear in evidence, this concludes our presentation of the case. I would like to have it understood that the report and the order are in evidence.

THE COURT: Yes. You have no objection to that at all?

MR. ST. CLAIR-ABRAMS: No.

THE COURT: By stipulation the report of the Interstate Commerce Commission and the order in question are admitted in evidence in this case.

MR. NEEDHAM: There is one other item we have overlooked. We want to put in evidence, unless it is admitted, that the other roads have complied with this order and filed the tariffs in compliance with the order.

MR. ST. CLAIR-ABRAMS: We object to that.

MR. NEEDHAM: They are now in effect and have been since the order became effective.

With reference to the competency of that evidence,

that is another question, but whether we shall have to file certified copies of the tariff, or whether you will admit that is a fact—

MR. ST. CLAIR-ABRAMS: But in making that admission, I propose to state the ground of my objection.

MR. NEEDHAM: You do not deny that they were put in effect?

MR. ST. CLAIR-ABRAMS: No.

MR. NEEDHAM: If that is admitted as a fact, I need not encumber the record with certified copies of these tariffs, which are quite voluminous.

MR. ST. CLAIR-ABRAMS: Subject to this objection, we admit the other two roads have put that in effect; but we object to this as evidence, first, because it is irrelevant; second, because the conditions existing on these two roads are not the same as exist on the Florida East Coast Line; third, because these two roads have large surpluses over and above their operating expenses and the East Coast Railway has none; because in the case of the Atlantic Coast Line Railway it not only pays all its fixed charges, but seven per cent dividends on its stock, and has millions of dollars of surplus in addition; fifth, in the matter of the Seaboard Air Line Railway, they pay all their fixed charges, but no dividends on their stock, although they have a surplus existing of several million dollars.

THE COURT: Those may be admitted subject to the objection of counsel.

What about your stipulation with respect to grading?

MR. NEEDHAM: I have not found Mr. Hudson to submit the matter to him, as he left the court room awhile ago, but he will be here tomorrow anyway and we can arrange as to that. So far as we are concerned, it is simply a matter for Mr. Hudson. I do not know how he feels about it. So far as we are concerned, we are ready to stipulate simply that the witness would testify to that.

MR. ST. CLAIR-ABRAMS: We are willing to put it

at 24 cents, although we know it could not be done for that.

THE COURT: Grading by the cubic yard?

MR. ST. CLAIR-ABRAMS: Yes, sir.

MR. NEEDHAM: I should want it to appear that the stipulation is that their witness would testify that the cost of grading at the present time was not less than 24 cents per yard; and so far as we are concerned we are ready to agree that if he were here he would testify to that. I do not know anything about the facts, as a matter of fact, but I admit he would testify to that—or I will admit it if Mr. Hudson has agreed to it, so as to avoid taking the testimony.

THE COURT: That would be the average price throughout without division as to rock or earth?

MR. PARROTT: That is as to earth work. We make no division for rock at all.

THE COURT: Do you have, as a matter of fact, in road building in Florida, much rock work?

MR. PARROTT: South from Lauderdale, everything we build is rock. Nearly every bit of the Key West extension is rock work.

MR. ST. CLAIR-ABRAMS: In the limited time we have had, we have not been able to send a man over the whole line of road. We know it costs more now than it did five years ago. It costs to build on that extension from Miami to Homestead through that rock from 65 to 90 cents per cubic yard.

MR. PARROTT: The minimum for the best work is 65 cents, and we have paid as high as 95 cents, but the average would be about 65 cents.

MR. NEEDHAM: You mean the main line?

MR. PARROTT: Yes.

MR. NEEDHAM: And that applies to the rock?

MR. PARROTT: Yes.

MR. NEEDHAM: But this, as I understand it, applies simply to estimates on earth work?

MR. PARROTT: Yes. There is very little earth work, if any, north of Fort Lauderdale, and that is 340 miles.

MR. NEEDHAM: As I understood this morning, the statement of Colonel Elliott shows the amount of earth bank.

MR. ST. CLAIR-ABRAMS: It is a curious oversight of Colonel Elliott, which I did not notice until after he testified, and he was very much mortified when it was called to his attention. From Miami to Homestead he took the actual money we had paid out, but coming back north from Miami he entirely overlooked the fact that more than half of that distance was rock, and made an estimate on earth work at 20 cents a cubic yard, making a difference against us of probably $170,000. I never discovered that until after he had testified at St. Augustine.

MR. NEEDHAM: It is rather difficult to see how we could apply the price of earth work to the whole line if it was not earth work. I understood this morning Colonel Elliott's report did specify a certain amount of earth work, and that this was to show that the earth work was more expensive now than at the time he estimated it at 20 cents, and that this witness would testify the earth work now would cost 24 cents.

MR. ST. CLAIR-ABRAMS: Certainly.

MR. NEEDHAM: But I did not understand that applied to anything but earth work.

MR. ST. CLAIR-ABRAMS: If you will agree to put in rock at four cents additional, when as a matter of fact, it costs today 40 or 50 cents more, I do not think you are harmed by it.

THE COURT: You want to average the price of rock and earth at 24 cents?

MR. ST. CLAIR-ABRAMS: From Miami to Jacksonville we put it all in at 24 cents, although for 40 miles it is rock, and because Mr. Elliott has put in that much rock as though it were earth work, when he should have made it much more.

MR. NEEDHAM: Does he not give the cubic yards in his report?

MR. ST. CLAIR-ABRAMS: Yes, but part of that is rock, and he lumps it all in as earth work.

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MR. NEEDHAM: Then it is all based on 20 cents?

MR. ST. CLAIR-ABRAMS: Yes, everything from Miami north.

THE COURT: Rock and earth?

MR. ST. CLAIR-ABRAMS: Yes.

THE COURT: We will pass that until tomorrow. You have no further testimony today, Dr. Needham?

MR. NEEDHAM: No, and that concludes, so far as I know, the testimony on the part of the Interstate Commerce Commission. Mr. Hudson is going to introduce evidence, as your Honor understands, and his witness may not get here until tomorrow afternoon.

MR. ESTERLINE: I do not believe we shall have any evidence to introduce, but will state definitely tomorrow.

THE COURT: Very well; we will adjourn then until tomorrow afternoon at 2 o'clock.

(Thereupon at 3:15 o'clock p. m., on March 26, 1912, the Court adjourned until 2 o'clock p. m., tomorrow, Wednesday, March 27, 1912.)

IN THE

UNITED STATES COMMERCE COURT.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*;
INTERSTATE COMMERCE COMMISSION, *Intervener*.

Washington, D. C., Wednesday, March 27, 1912.
2 o'clock p. m.

The Court met pursuant to adjournment.
Present, Mr. Justice Hunt.
Appearances:
Mr. St. Clair Abrams and Mr. Bryan, for the petitioner.
Mr. Esterline, for the United States.
Mr. Needham, for the Interstate Commerce Commission.
Mr. Hudson, for the Florida Board of Railroad Commissioners.

PROCEEDINGS.

MR. ST. CLAIR-ABRAMS: I want to introduce, if your Honor please, a certified copy from the records, of a statement which I used upon the application for the injunction. It is on file here, but I thought probably I had better insure it by introducing it here and filing it as a certified copy.

(The exhibit was received in evidence and marked Petitioner's Exhibit No. —, and is attached hereto and forwarded herewith.)

MR. HUDSON: If your Honor please, the witness whom we expected to be here to-day was unable to get here. I have a telegram here stating that he is

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unable to come on account of sickness of his business associate, and I believe a relative, and it is manifest we could not get the witness here to-day, and according to this telegram he is unable to say now when he could get here, so that leaves the matter in a condition where we are unable to proceed with that line of testimony, and we have no other witness to put on in his place.

MR. ST. CLAIR-ABRAMS: Now, if the Court please, as counsel has put in evidence the starting point of these roads, the Atlantic Coast Line and the Seaboard Air Line, I ask if counsel will agree that the Atlantic Coast Line Road starts here, in Florida, as your Honor will see, and runs through six States. You will admit that fact, won't you?

MR. NEEDHAM: Oh, yes.

MR. ST. CLAIR-ABRAMS: It is admitted that the Atlantic Coast Line Railroad Company starts in Florida and extends beyond the State of Florida into six States.

THE COURT: You had better state the starting point.

MR. ST. CLAIR-ABRAMS: This is the complete line of railways.

THE COURT: State the starting point. Just give the starting point.

MR. ST. CLAIR-ABRAMS: Fort Meyer, in Southern Florida, and extends in six States, to Richmond, Virginia. I will state that the road from Richmond to Washington is owned jointly by the Atlantic Coast Line, Seaboard Air Line, State of Virginia, and R. F. & P., the Richmond, Fredericksburg & Potomac, and is practically both the Seaboard and Atlantic Coast Line Systems.

The Seaboard runs through identically the same territory, as you will see. The Seaboard runs through, beginning about at Boco Grande, in South Florida, and extends north beyond the State of Florida through six States, extending as far north—they have got this marked to Washington, but it is

really to Richmond, because from Richmond on it is owned jointly by the different roads.

MR. NEEDHAM: Yes, that is right.

MR. ST. CLAIR-ABRAMS: Now, I ask you to agree to another fact, that the freight rate on fruits and vegetables is one of the highest rates of the different classes.

THE COURT: Generally speaking, you mean?

MR. ST. CLAIR-ABRAMS: Generally speaking. There is no question about that. For instance, the rate on such articles as fuller's earth, kaolin and phosphate rock is less than the fruit rate.

MR. NEEDHAM: What you mean is when it moves under class rates it takes the higher class?

MR. ST. CLAIR-ABRAMS: Oh, yes.

MR. NEEDHAM: I don't know that fact, but I should presume it is true. I don't know about it, but I can find out about that, and no doubt it is true, your Honor.

MR. ST. CLAIR-ABRAMS: There is very little, if anything, higher than fruit and vegetables.

MR. NEEDHAM: It is easily ascertainable, of course.

MR. ST. CLAIR-ABRAMS: You can ascertain that by examining the rates. Such things as kaolin, phosphate rock, hay, and lumber, the rate is enormously lower.

The Interstate Commerce Commission has called our attention to the fact that all these papers are really originals and we need no certification of them. The other papers are in the hands of the secretary now, and he thought he could have them by two o'clock, but he advises us he cannot, so that we will hand them in just as soon as he hands us the certification. Meantime we will put in evidence these that are already certified or are original communications.

(The papers offered by counsel were received in evidence, marked respectively "Petitioner's Exhibit No. 2," "Petitioner's Exhibit No. 3," "Petitioner's Exhibit No. 4," "Petitioner's Exhibit No. 5," "Pe-

titioner's Exhibit No. 6," "Petitioner's Exhibit No. 7," "Petitioner's Exhibit No. 8," "Petitioner's Exhibit No. 9," and "Petitioner's Exhibit No. 10," and the same are filed herewith.)

MR. ST. CLAIR-ABRAMS: I will state to the court that I have inquired to find out why the testimony has not been sent. I cannot explain it except that I know that it is a fact Mr. Turner has been engaged every day in taking testimony in the circuit court, but he promised me he could certainly have them here by Monday, and I am advised by the clerk here that they had not yet arrived. I wired him to immediately forward them. I especially told him to at least send us the testimony taken before Judge Archbald, because that was already prepared, and why he has not sent it I cannot understand.

THE COURT: We come to this in the last analysis of the discussion we have had aside from the record; as between the Government and the Interstate Commerce Commission and the railway company the case is completed, the understanding being, that you are to have permission to include those papers that are now awaiting certification.

MR. ST. CLAIR-ABRAMS: Yes, sir, and some exhibits that were to be prepared, some by me and some by Dr. Needham.

THE COURT: Some papers that are in course of preparation and deemed, for the purposes of this case, admitted.

MR. ST. CLAIR-ABRAMS: Yes, sir.

THE COURT: As between the intervener and the railway company, you and Mr. Hudson are to endeavor to agree as to what Mr. Chase would testify to if placed upon the witness stand.

MR. ST. CLAIR-ABRAMS: Yes, sir.

THE COURT: And in the event of that being hopeless thereupon Mr. Hudson is to notify you that he will apply to the Court or a judge thereof for the

purpose of setting a time when there shall be an oral examination of Mr. Chase.

MR. ST. CLAIR-ABRAMS: Yes, sir.

THE COURT: And a time will be fixed then, upon the receipt of that.

MR. HUDSON: There is one amendment there, your Honor. I am not sure that we can cover all this ground that we desire to cover with Mr. Chase. It may be necessary to use another witness or two.

THE COURT: Then we will limit that to two witnesses.

MR. ST. CLAIR-ABRAMS: Including Mr. Chase?

MR. HUDSON: Yes.

THE COURT: Two witnesses, then.

MR. ESTERLINE: In the event that the Government may determine to put in the whole of the documents that Mr. St. Clair-Abrams has put in a part—

MR. ST. CLAIR-ABRAMS: You can do that as a matter of right.

THE COURT: Furthermore, these records of the Interstate Commerce Commission which are offered in evidence and are already in print need not be printed, nor any maps or plats that have been used, that are printed, the originals may be used on the argument of the case.

MR. ST. CLAIR-ABRAMS: You require us to reprint those?

THE COURT: No, I say they need not be printed.

Then, I can only say this, that I will bring the matter to the attention of the judges and endeavor, so far as can be, to advise them that it is desirable that the case be heard upon final hearing during the month of April, approximately the 20th of April, or thereabouts, endeavoring to accommodate counsel.

MR. ST. CLAIR-ABRAMS: I will state, as I have stated a while ago, that I will try to do it, but I do not see how I can possibly do it by the 20th of April.

THE COURT: I will tell them what you say, but I cannot say what the Court will do.

MR. ST. CLAIR-ABRAMS: If I attempt to neglect carrying up this case of which I speak, it will result in a loss on the part of my client of forty odd thousand dollars.

THE COURT: Well, you will have to do the best you can. I understand exactly your position, and I will set it forth to the other judges, but you need not come here, there is no need of your coming here yourself on the 9th, or Mr. Hudson coming here. You need have no fear that the Court is going to take any snap judgment in setting the case or in any other respect.

MR. ST. CLAIR-ABRAMS: Oh, no, I had no thought of that. I would like to ask the Court a question. Might I not just present a statement to the Court stating the name of the case and everything, the necessity for my being absent. I will state that I have no desire to delay the final hearing of this case.

THE COURT: You might have Mr. Bryan appear with that on the 9th of April.

MR. BRYAN: May it please the Court, one more question. Do I understand from the statement you have just made that copies of orders of the Interstate Commerce Commission need not be printed, shall also apply to copies of pleadings in the case and to other records in the case?

THE COURT: I do not think they need to be reprinted.

(Thereupon, at 3 o'clock P. M., the further hearing of this cause was continued to a date to be later fixed by the Court.)

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No. 58.

In The United States Commerce Court.

FLORIDA EAST COAST RAILWAY COMPANY, PETITIONER,

v.

UNITED STATES, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, INTERVENING RESPONDENT.

STATEMENTS AND EXHIBITS INTRODUCED IN EVIDENCE BY THE INTERSTATE COMMERCE COMMISSION.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1913

In The United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, PETITIONER,

v.

UNITED STATES, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, INTERVENING RESPONDENT.

EXHIBITS INTRODUCED IN EVIDENCE BY THE INTERSTATE COMMERCE COMMISSION UPON CROSS-EXAMINATION OF W. H. CHAMBERS AND J. R. PARROTT AND DIRECT EXAMINATION OF C. V. BURNSIDE, AND STATEMENT BY J. C. CHASE.

(References are to the record printed by the petitioner.)

No. 1.

(Testimony of W. H. Chambers, p. 223, record.)

FLORIDA EAST COAST RAILWAY,
OFFICE OF THE COMPTROLLER,
St. Augustine, January 31, 1912.

Mr. C. A. LUTZ,
Chief Examiner, Interstate Commerce Commission,
Washington, D. C.

DEAR SIR: In accordance with my understanding of agreement between counsel for the commission and the railroad company, I am sending you herewith statement of plant account, showing the journal entries from 1887 to November 30, 1911.

You will note there is a separate statement of equipment. We will add about $350,000 this month to our equipment account for passenger and freight equipment already delivered and on the way.

Detail of charges to the Key West extension, as shown in the annual reports, is also inclosed, all of which, I trust, will be found satisfactory.

Yours, truly,

W. H. CHAMBERS,
Comptroller.

No. 2.

FLORIDA EAST COAST RAILWAY.

Statements of cost of road and equipment.

[Prepared and furnished by W. H. CHAMBERS, comptroller, January 31, 1912.]

(Testimony of W. H. Chambers, p. 224, record.)

STATEMENT PLANT ACCOUNT.

		Debits.	Credits.
1887.			
Dec. 31	To capital stock	$200,000.00	
31	To bond account (bonds issued)	300,000.00	
31	By cash paid C. C. Deming by H. M. F		$20,000.00
1888.			
Nov. 30	To discount on bonds	15,000.00	
30	To engraving bonds	1,040.00	
1889.			
May 31	To certifying bonds, American Bank Note Co	1,000.00	
31	To certifying bonds, Mercantile Trust Co	300.00	
June 30	By push, flat, box, and compartment cars		1,762.00
Aug. 31	By hand car for J. & L. W. R. R		35.00
Sept. 30	By cash		62.50
30	By insurance on South Jacksonville shops, collected		1,760.93
Oct. 31	To amount charged to operating expenses during 1887 properly chargeable to betterments	34,637.16	
31	To construction during 1887	32,627.12	
31	To construction during 1888	6,293.23	
Nov. 30	To sale of locomotive and cars		7,200.00
Dec. 31	To construction during 1889	3,414.39	
31	To construction during 1887	1,212.30	
31	To reconstruction during 1889	83,056.79	
31	To rail purchased May to September, 1889	75,333.43	
1890.			
Mar. 31	By rail sold to J. T. & K. W. Ry		1,910.00
May 31	To overcharge on rail, 1889	131.59	
31	To switches, etc., charged D. Hunter in error	136.80	
June 30	By rail sold to J. T. & K. W. $1,263.23 90.44		1,353.67
30	By rail sold to H. Clark		1,168.21
July 31	By rail sold Florida Southern Railway and H. Clark		820.33
Dec. 31	To construction during 1890	80,957.20	
31	To reconstruction during 1890: Roadway $11,081.25 Equipment 96.48	11,177.73	
1891.			
Dec. 31	To construction, 1891	5,660.25	
31	By error March, 1890, amount $1,910 should be $1,910.02		.02
1892.			
Mar. 31	To land purchased	20,055.00	
31	By ferryboats sold to J. M. & P. Ry		5,000.00
Dec. 31	To construction, 1892, journal 3, p. 149	66,696.76	
1893.			
Dec. 31	To purchase of A. & W. R. R., journal 3, p. 351	100,000.00	
31	To Jacksonville Bridge, journal 3, p. 356	356,461.56	
31	To cost of San Mateo Spur, journal 3, p. 356	28,571.08	
31	To construction, 1893, journal 3, p. 357	99,953.88	
1894.			
Dec. 31	To accounts of St. J. & H. R. R., journal 4, p. 231	490,590.56	
31	To Palatka Bridge, journal 4, p. 231	21,941.12	
31	To accounts of St. A. & H. R. R	389,591.71	
31	To construction, 1894, journal 4, p. 255	12,772.06	
31	To betterments, 1894, journal 4, p. 256	23,432.53	
31	By sale of old rail		1,630.75
31	By sale of A. & W. Telegraph Line		500.00

STATEMENT PLANT ACCOUNT—Continued.

		Debits.	Credits.
1895.			
Jan. 30	By cash, old house sold		$15.00
May 31	By old rail sold		377.97
June 30	....do		2,389.65
30	To cost Northup suit, journal 4, p. 384	$5,175.38	
30	To betterments, 1895	16,445.61	
July 31	To St. A. & H. bonds, journal 4, p. 413	255,000.00	
31	By rail sold, journal 4, p. 424		12,750.52
31	To vouchers, journal 4, p. 424	73.09	
31	To freight charges on rail sold, journal 4, p. 430	640.00	
Aug. 31	To first-mortgage bonds canceled, journal 4, p. 436	1,000,000.00	
31	To second-mortgage bonds canceled, journal 4, p. 436	600,000.00	
31	To first-mortgage bonds purchased, journal 4, p. 436	272,300.00	
31	To certifying bonds, journal 4, p. 437	465.00	
31	By all bonds canceled, journal 4, p. 436		2,349,000.00
1896.			
June 30	To H. B. Ely, trustee, vouchers	600.00	
30	To construction, journal 5, p. 205	2,278,552.10	
30	To betterments, journal 5, p. 206	34,945.85	
30	To construction, F. C. & G., journal 5, p. 210	516.00	
30	By insurance on building, journal 5, p. 199		2,000.00
July 31	To G. P. Healy claim, vouchers	1,000.00	
31	To advertising meeting of directors, vouchers	52.00	
1897.			
Feb. 28	To loss on ties left from construction, journal 5, p. 368	5,648.51	
June 30	To new paint shop	3,150.51	
30	To steamboats St. Lucia, Sweeney, and Courtney, journal 5, p. 448	33,939.67	
30	Construction Miami extension and ocean pier, journal 5, p. 448	446,874.70	
30	To betterments, journal 5, p. 449	19,443.50	
30	To new car shed, journal 5, p. 450	1,266.33	
July 31	By material from sidings taken up, journal 5, p. 459		3,643.36
Sept. 30	By material from sidings taken up, journal 5, p. 494		425.89
Oct. 31	To commission paid on bond sale, journal 5, p. 499	49,165.63	
31	To recording first mortgage	38.33	
1898.			
Feb. 28	To service bond trustees	2,903.60	
Apr. 30	To real estate from H. M. F	8,696.60	
June 30	To construction, journal 5, p. 589	17,772.43	
30	To betterments, journal 5, p. 589	48,598.90	
30	To new hospital building, journal 5, p. 590	11,388.33	
30	By material taken from sidings, vouchers		1,378.07
30	By old section house sold, vouchers		10.00
30	By A. & W. locomotive sold, vouchers		1,200.00
30	By material charged shop account, vouchers		179.54
Aug. 31	To printing first-mortgage bonds, journal 6, p. 10	3,312.00	
Nov. 30	To Oak Hill building	10.00	
Dec. 31	To settlement ocean pier suit	3,423.95	
1899.			
Apr. 30	To St. Augustine depot lot purchased	8,843.94	
June 30	To betterments, journal 6, p. 71	41,206.19	
30	To hospital building, journal 6, p. 72	48.36	
30	To Miami terminals, journal 6, p. 72	30,024.38	
30	To profit and loss charged off, journal 6, p. 76	789,455.29	
30	By transit sold		173.00
30	By old section house sold		5.00
30	By Tocoi Branch rail disposed of		10,383.49
30	By sidings taken up		1,147.54
30	To profit and loss charged off, journal 6, p. 77	92,444.56	
31	To recording letters patent	1.00	
31	To publishing notice of charter	3.83	
1900.			
June 30	To Biscayne Bay improvement, journal 6, p. 115	232,344.68	
30	To operating dredges, journal 6, p. 115	2,548.29	
30	To betterments	78,407.07	
30	By old house sold		63.00
30	By sidings taken up		7,477.82
1901.			
June 30	To correction account registering vouchers	11.10	
30	To Biscayne Bay improvement, journal 6, p. 148	93.20	
30	To operating dredges 1 and 2, journal 6, p. 148	570.15	
30	To Key West Wharf property, journal 6, p. 148	827.36	
30	To betterments	197,926.15	
30	By property sold		409.64
30	By sidings taken up		5,315.64
30	By roadway supplies on hand		14,317.32

STATEMENT PLANT ACCOUNT—Continued.

		Debits.	Credits.
1902.			
June 30	To New Smyrna Bridge Co.	$349.00	
30	To Pablo Beach Branch, journal 6, p. 178	343,674.51	
30	To betterments, journal 6, p. 178	268,435.10	
30	To rock ballast, journal 6, p. 178	13,292.87	
30	To rock-crushing plant, journal 6, p. 178	7,257.97	
30	By sidings taken up		$1,538.05
30	By credit from Standard Oil Co. empty drums		120.00
30	By old tank sold		6.00
30	By swill track charged hotel company		799.18
30	By swill track charged roadway		196.10
Dec. 31	To repairing steamboat Santa Lucia	5,489.00	
1903.			
June 30	To recording mortgages	30.10	
30	To net earnings put into plant, ledger 6, p. 192	580,573.34	
30	To interest on capital stock, ledger 6, p. 192	275,000.00	
30	To Mayport Terminal Co. stock, ledger 6, p. 192	23,205.66	
30	To property purchased from H. M. F., ledger 6, p. 192	88,114.57	
30	To loss on sale of bonds	3,000,000.00	
30	To fees account bond issue	1,201.00	
30	To P. & O. SS. Co. stock	556,747.36	
30	To Recording	16.25	
30	To Southeastern Rwy	74,900.23	
30	To betterments	127,670.06	
30	To engraving bonds	3,807.00	
30	By J. & A. land sold		787.50
30	By old building sold		5.00
30	By steamboat sold—Santa Lucia		13,000.00
30	By sidings taken up		4,360.41
30	By old Lake Worth bridge material taken in stock		269.81
30	By rock ballast account charged off		6,959.92
1904.			
June 30	To charge against renewal of rail corrected	1,510.01	
30	To handling old locomotive sold	11.04	
30	To betterments	96,964.44	
30	By material from sidings, etc., taken into stock		9,531.99
30	By sale of property, Ormond Golf Club, etc		385.00
30	By locomotive sold		750.00
1905.			
June 30	To betterments	143,458.43	
30	To Cutler extension, to Homestead	404,259.17	
30	To rock crusher	376.50	
30	By steamboat Courtney sold		650.00
30	By rock from crusher sold		170.00
30	By insurance on building burned		400.00
30	By sidings taken up		3,291.70
1906.			
June 30	To expense account Mayport Division land	30.35	
	To betterments	414,588.16	
	By Orange Mills and Grant stations burned		390.00
	By sidings taken up		2,095.10
	By rail sold		1,128.93
	By steamboat Biscayne sold		6,574.81
1907.			
June 30	To betterments	217,586.88	
	By sidings taken up		18,304.31
	By old building sold		5.00
	By stationary engine sold		300.00
	By material charged stock, inventory adjustment		31,913.58
July 31	To sundry items	53.00	
	By material released		1,222.50
Aug. 31	By P. & O. SS. stock taken out of plant		556,747.36
Dec. 31	By material released		3,669.55
1908.			
Jan. 31	To correction of amount credited June 30, 1907, in adjusting inventory furnished by roadway department	31,913.58	
	By correction of journal entry made June 30, 1906–7, in adjusting inventory of rail		173,465.37
Mar. 31	To sundry items	10.00	
31	By sundry items		125.00
June 30	By rail released		1,326.70
	To charges Key West extension, per statement	9,654,508.01	
	To Biscayne Bay improvements	121,053.57	
	To betterments	108,952.09	
	To Titusville drainage	1,865.25	
July 31	By sundry items		41.25
Aug. 31	By material released		1,991.45
Sept. 30	By land sold at Cocoa		2,500.00
Oct. 31	By material released		535.12
Nov. 30	By land sold at Pablo		5,297.60

STATEMENT PLANT ACCOUNT—Continued.

		Debits.	Credits.
1909.			
Jan. 31	To sundry items	$101.20	
Feb. 28	By Palm Beach street car and tracks		$1,323.03
May 31	By sundry items		558.10
	To H. H. Buckman's account charged off	2,200.00	
	To charges Key West extension, per statement	2,904,762.27	
	To betterments	287,331.39	
	By sidings taken up		2,410.97
Aug. 31	By land sold		10.00
Nov. 30	By land sold		900.00
1910.			
Mar. 31	By land sold		292.50
Apr. 30	By land sold		305.00
May 31	By land sold		5,809.00
June 30	By land sold		100.00
30	By sundry items		6.62
30	To charges Key West extension, per statement	3,055,447.67	
	To betterments	244,623.86	
July 31	To sundry items	4.75	
31	By land sold		100.00
1911.			
June 30	To betterments	430,733.54	
	By balance		29,232,262.23
		32,550,797.60	32,550,797.60
July 1	To balance	29,232,262.23	
	Betterments to Nov. 30, 1911	312,140.74	
	Charges Key West extension, Nov. 30, 1911, not closed into plant account	4,764,755.79	
	Charges to Kissimmee Valley extension not closed into plant account to Nov. 30, 1911	98,680.83	
	Total to Nov. 30, 1911	34,407,839.59	
	Main line	13,617,654.28	
	Key West extension	15,614,607.95	
		29,232,262.23	

STATEMENT OF EQUIPMENT.

1887.			
Dec. 31	Equipment purchased, ledger 1, p. 15	$34,298.53	
1888.			
Mar. 31	Equipment sold and destroyed		$4,107.80
Nov. 30	New locomotives, journal 1, p. 195	35,000.00	
	Equipment sold, May, 1889, to June, 1890, ledger 1, p. 14		28,797.50
1889.			
Mar. 31	Equipment purchased, ledger 1, p. 122	19,725.00	
	Balance construction, equipment, 1886 to 1888, ledger 1, p. 260	19,329.71	
Jan. 31	Equipment purchased, journal 2, p. 8	12,840.00	
Feb. 28	Equipment purchased, journal 1, p. 232	67,210.27	
May 31	Equipment purchased, voucher	234.94	
Apr. 30	Equipment purchased, journal 2, p. 7	4,110.00	
June 30	Equipment purchased, journal 2, p. 33	3,400.00	
July 31	Vouchers	23.25	
June 30	Sold to St. J. & H., journal 2, p. 40		5,100.00
1892.			
Mar. 31	Locomotives sold, Orange Belt Ry., journal 3, p. 24		1,200.00
1893.			
Dec. 31	New equipment, journal 3, p. 356	183,083.03	
1894.			
Dec. 31	To accounts of St. J. & H. R. R., journal 4, p. 231	39,464.43	
	To accounts of St. A. & H. R. R., journal 4, p. 231	19,418.85	
	To equipment purchased and built, 1894, journal 4, p. 255	116,415.41	
	To equipment bettered, journal 4, p. 260	706.29	
1895.			
Mar. 31	By cash		75.00
June 30	To new equipment, journal 4, p. 407	1,611.02	
	To equipment built and bettered, journal 4, p. 408	2,098.09	
1896.			
June 30	To new equipment, journal 5, p. 205	30,057.32	
	To equipment bettered, etc., journal 5, p. 206	7,829.81	
	By baggage car 10 burned, journal 5, p. 199		3,500.00

STATEMENT OF EQUIPMENT—Continued.

		Debits.	Credits.
1897.			
June 30	To new equipment, journal 5, p. 448	$163,835.92	
	To equipment bettered, etc., journal 5, p. 448	9,089.20	
1898.			
June 30	To new equipment, journal 5, p. 589	97,386.01	
	To equipment bettered, journal 5, p. 590	5,197.78	
	By equipment sold, voucher		41,046.67
1899.			
June 30	To equipment bettered and built, journal 6, p. 71	36,358.75	
	To new equipment, journal 6, p. 71	134,903.10	
Nov. 30	By engine 8 sold		1,400.00
1900.			
June 30	To new equipment, journal 6, p. 115	78,572.01	
30	To equipment bettered, etc., journal 6, p. 116	34,537.95	
1901.			
June 30	To new equipment, journal 6, p. 148	87,225.22	
	To equipment bettered, etc., journal 6, p. 148	24,059.94	
1902.			
June 30	To new equipment, journal 6, p. 179	402,205.51	
1903.			
Apr. 30	To vouchers	283.86	
June 30	To new equipment, journal 6, p. 207	2,010.25	
	To equipment bettered, journal 6, p. 207	35,097.85	
	To equipment bettered, journal 6, p. 208	1,141.81	
	By equipment destroyed, etc., September, 1902, to May, 1903		2,271.36
1904.			
June 30	To new equipment	178,289.16	
	To equipment bettered	.37	
	By equipment sold and destroyed		6,388.90
1905	To new equipment, journal 6, p. 264	92,093.73	
1906.			
June 30	To new equipment, journal 6, p. 292	392,505.42	
	By equipment sold and destroyed		1,626.67
	By depreciation on locomotives sold		16,700.00
1907.			
June 30	To new equipment	327,032.27	
	By equipment sold, etc		69.29
Aug. 31	By flat cars sold		4,528.00
1908.			
Oct. 31	By sleeping and parlor cars sold		250,000.00
	By loss on sale of sleeping and parlor cars		43,524.70
Feb. 29	To locomotives purchased	225,149.65	
1909.			
Apr. 30	By depreciation on sleeping and parlor cars		23,207.55
1910.			
Feb. 28	To expenses in connection with new locomotives	323.93	
Mar. 31	To expenses in connection with new locomotives	28.58	
Apr. 30	To expenses in connection with new locomotives	87.00	
May 31	To new locomotives	108,000.00	
31	By equipment destroyed		725.00
	By equipment destroyed		2,751.00
Sept. 30	By locomotives sold		22,950.00
1911.			
June 30	To new equipment purchased	83,665.69	
	By balance		2,696,479.69
		3,116,536.93	3,116,536.93
July 1	To balance	2,696,479.69	
	Equipment purchased to Nov. 30, 1911, not closed into equipment account	289,086.48	
	Total Nov. 30, 1911	2,985,566.17	

CHARGES TO KEY WEST EXTENSION FROM JULY 1, 1904 (COMMENCEMENT), TO JUNE 30, 1910.

	June 30, 1905, Key Largo exploration.	June 30, 1906, Key West extension.	June 30, 1907, Key West extension.	June 30, 1908, Key West extension.	Total to June 30, 1908, closed into plant account.
Engineering	$123,847.50	$96,918.94	$96,812.55	$52,625.70	$370,204.69
Right of way and station grounds	41.35	21,560.93	24,742.00	5,310.03	51,654.31
Real estate		40,012.00		9,487.65	49,499.65
Grading	6,106.46	989,274.05	1,396,654.35	693,712.31	3,085,747.17
Bridges, trestles, and culverts	358.66	36,502.71	1,167,469.10	850,991.62	2,055,322.09
Ties	1,717.20	13,984.76	85,100.33	54,255.12	155,057.41
Rails	2,154.20	5,215.32	241,760.27	31,295.38	280,425.17
Frogs and switches	132.50	356.78	3,058.01	2,441.76	5,988.45
Track fastenings, etc	300.00	2,839.30	44,400.41	5,461.92	53,001.63
Ballast		386.40	106,719.41	128,938.49	236,044.30
Track laying and surfacing		3,761.23	54,994.41	99,724.71	158,480.35
Roadway tools	1,699.77	436.91			2,136.68
Fencing right of way					
Crossings and signs				70.59	70.59
Interlocking and other signals					
Telegraph and telephone			18,102.35	24,351.37	42,453.72
Station buildings and fixtures			2,371.58	5,891.88	8,263.46
General office buildings and fixtures					
Shops, engine house, and terminal		[1] 324.85	324.85	2,502.61	2,502.61
Shop machinery and tools					
Water stations			4,518.97	22,223.51	26,742.48
Fuel stations				745.28	745.28
Storage warehouses					
Dock and wharf property		13,910.74	148,904.35	32,124.08	195,029.67
Electric-light plants					
Miscellaneous structures					
Transportation, men and material		[1] 16,724.65	157,992.52	61,317.90	202,585.77
Rent of equipment	135.68	19,275.93	61,215.80	92,011.26	172,638.67
Repairs of equipment	58.92	4,818.98	15,303.95	22,977.82	43,159.67
Earnings and operating expenses during construction					
Injury to persons					
Work and floating equipment	30,275.74	956,667.74	538,357.81	[1] 63,788.97	1,461,512.32
Law expenses	93.50	700.00	9,701.00	24,773.98	35,268.48
Stationery and printing					
Insurance		4,729.16	5,143.36		9,872.52
Taxes					
Interest and commission		39,477.08	248,321.80	582,545.73	870,344.61
Other expenditures		9,318.60	36,430.45	33,907.21	79,656.26
	166,921.48	2,243,097.46	4,468,490.13	2,775,898.94	9,654,408.01

[1] Credit.

CHARGES TO KEY WEST EXTENSION FROM JULY 1, 1904 (COMMENCEMENT), TO JUNE 30, 1910—Continued.

	June 30, 1909, closed into plant account.	June 30, 1910, closed into plant account.	Total to June 30, 1910, closed into plant account.
Engineering	$38,554.38	$61,363.39	$470,122.46
Right of way and station grounds	52,185.10	3,856.25	107,695.66
Real estate	3,204.85	805.00	53,509.50
Grading	655,075.96	638,262.41	4,379,085.54
Bridges, trestles, and culverts	590,681.74	1,432,892.65	4,078,896.48
Ties	24,594.65	43,056.73	222,708.79
Rails	84,690.83	76,572.67	441,688.67
Frogs and switches	2,506.51	2,002.97	10,497.93
Track fastenings, etc	6,462.42	8,063.82	67,527.87
Ballast	193,306.50	49,307.08	478,657.88
Track laying and surfacing	40,322.26	36,306.87	235,109.48
Roadway tools	123.90		2,260.58
Crossings and signs		41.15	111.74
Interlocking and other signals	1,475.56	550.39	2,025.95
Telegraph and telephone	11,129.54	12,486.67	66,069.93
Station buildings and fixtures	310.84	89.42	8,663.72
Shops, enginehouse and terminal	294.27	7,827.12	10,624.00
Water stations	15,602.97	[1] 897.32	41,448.13
Fuel stations	27.84		773.12
Storage warehouse	9,204.49	3,266.83	12,471.32
Dock and wharf property	6,404.08	122,348.11	323,781.86
Electric-light plants	1,002.25		1,002.25
Miscellaneous structures	5,899.39	8,151.79	14,051.18
Transportation, men and material	6,851.60	98,347.96	307,785.33
Rent of equipment	[1] 42,491.01	69,971.75	200,119.41
Repairs of equipment	179,523.33	207,134.68	429,817.68
Earnings and operating expenses during construction	68,699.14		68,699.14
Injury to persons	19,764.71	32,458.47	52,223.18
Work and floating equipment	69,749.69	34,364.17	1,565,626.13
Law expenses	51,206.07	8,100.35	94,574.90
Stationery and printing	1,658.99	2,949.46	4,608.45
Insurance	3,439.40	8,266.76	21,578.68
Taxes	225.62		225.62
Interest and commissions	735,444.17	26,146.49	1,631,935.27
Other expenditures	67,620.23	61,353.58	208,630.07
Total	2,904,752.27	3,055,477.67	15,614,607.96

[1] Credit.

No. 3.

(No. 40. Testimony of Mr. Chambers, p. 565, record.)

INTERSTATE COMMERCE COMMISSION,
DIVISION OF CARRIERS' ACCOUNTS,
Washington, February 5, 1912.

Mr. W. H. CHAMBERS,
Comptroller, Florida East Coast Railway Company,
St. Augustine, Florida.

DEAR SIR: In reviewing the statements of the road and equipment accounts of the Florida East Coast Railway Company furnished by you and forwarded to this office under date of January 31, 1912, I note the following-named items of debit to "Plant account" which are not clearly understood from the entries given in the statement and concerning which further information disclosing their nature is desired. The detail given should be sufficient to form the basis of an opinion as to the propriety of the entries.

Dec. 31st, 1889. To reconstruction during 1889	$83,056.79
(And other items on sundry dates similarly designated.)	
Mar. 31st, 1892. To land purchased	20,055.00
Apr. 30th, 1898. To real estate from H. M. F	8,696.60
(The location and description of land and real estate are desired.)	
Dec. 31st, 1894. To accts. of St. J. & H. R. R., J. 4, page 231	490,590.56
Dec. 31st, 1894. To accts. of St. A. & H. R. R	389,591.71
June 30th, 1897. To steamboats St. Lucia, Sweeney, and Courtney, J. 5, page 448	33,939.67
(Information is desired as to the use and final disposition of the steamboats.)	
June 30th, 1897. Construction Miami ext. and ocean pier, J. 5, pg. 448	446,874.70
(A separate statement is desired of the cost, description, and use of the ocean pier.)	
June 30th, 1899. To profit and loss charged off, J. 6, page 76	789,455.29
June 30th, 1899. To profit and loss charged off, J. 6, page 77	92,444.56
June 30th, 1900. To Biscayne Bay improvement, J. 6, page 115	232,344.68
June 30th, 1908. To Biscayne Bay improvements	121,653.57
Dec. 31st, 1902. To repairing steamboat Santa Lucia	5,489.00
June 30th, 1903. To net earnings put into plant, L. 6, pg. 192	580,573.34
June 30th, 1903. To interest on capital stock, L. 6, pg. 192	275,000.00
June 30th, 1903. To Mayport Terminal Co. stock, L. 6, pg. 192	23,205.66
June 30th, 1903. To property purchased from H. M. F., L. 6, pg. 192	88,114.57
June 30th, 1903. To loss on sale of bonds	3,000,000.00

Explanation is also desired of the following debit items in the "Statement of equipment:"

Dec. 31st, 1894. To accts. of St. J. & H. R. R., journal 4, page 231.....	$39,464.43
Dec. 31st, 1894. To accts. of St. A. & H. R. R., journal 4, page 231.....	19,418.85
Dec. 31st, 1894. To equipt. bettered, J. 4, page 260.....	706.29

(And other items on sundry dates similarly designated as "Equipment bettered.")

The receipt of the additional information above indicated is, of course, desired at the earliest date practicable.

Yours, very truly,

(Signed) CHAS. A. LUTZ,
Chief Examiner of Accounts.

(D)

CVB–EHH.

No. 4.

(Testimony of Mr. Chambers, p. 250, record.)

FLORIDA EAST COAST RAILWAY,
OFFICE OF THE COMPTROLLER,
St. Augustine, February 9th, 1912.

Mr. C. A. LUTZ,
Chief Examiner, Interstate Commerce Commission,
Washington, D. C.

DEAR SIR: In making reply to your letter of the 5th, file 88727, with reference to statements of road and equipment accounts of the Florida East Coast Railway Company, taking the items in the same order as they appear in your letter, I beg to advise as follows:

1889, December 31st. Reconstruction during 1889. (See statement.)

I find but one other item similarly designated, the same dated December 31st, 1890, and itemized in the original statement, showing total $11,177.73.

1892, March 31st. Land purchased. (See statement.)

1898, April 3rd. Real estate from H. M. Flagler. (See statement.)

1894, December 31st. Accounts of St. J. & H. R. R., $490,590.56, and accounts of St. A. & H. R. R., $389,591.71, represent the purchase price of these roads and improvements of same up to this date.

1897, June 30th. Steamboats *Santa Lucia*, *Sweeney*, and *Courtney*, $33,939.67. These boats were purchased for operation on the Indian River and Lake Worth, between Titusville and Palm Beach, while the line was being constructed between those points. Final disposition appears on the credit side of statement of plant account rendered under dates June 30th, 1903, June 30th, 1905, and June 30th, 1906.

June 30th, 1897. Construction Miami extension and ocean pier. (See statement.) Ocean pier was constructed for use in the operation of line of steamers between Palm Beach and Nassau, which line was afterwards transferred to Miami.

1899, June 30th. Profit and loss charged off, $789,455.29.

June 30th. Profit and loss charged off, $92,444.56.

Loss from operations charged to plant.

1900, June 30th. Biscayne Bay improvement, $232,344.68.

1908, June 30th. Biscayne Bay improvement, $121,653.57. This represents the amount expended in dredging Biscayne Bay to make

same navigable for steamers plying between Miami and Key West and Havana.

1902, December 31st. Repairing steamboat *Santa Lucia*, $5,489.00. This amount was expended in fitting this boat for sale. (See credit to plant account under June 30th, 1903.)

1903, June 30th. Net earnings put into plant, $580,573.34. This amount considered fair recompense to Mr. Flagler for investments to that date on which no returns had been received.

June 30th, 1903. Interest on capital stock, $275,000.00. Same explanation is offered as item first above.

June 30th, 1903. Mayport Terminal Company stock acquired by purchase of property.

June 30th, 1903. Property purchased from H. M. Flagler. (See statement.)

June 30th, 1903. Loss on sale of bonds, $3,000,000.00. In this case six million dollars of bonds were sold for three million dollars, and as the property was rapidly increasing in value, it was considered fair to put the difference into plant.

1894, December 31st. Accounts of St. J. & H. R. R., $39,464.43, and accounts of St. A. & H. R. R., $19,418.85, represent the value of equipment taken over with the purchase of these roads.

December 31st, 1894. Equipment bettered $706.29. (See statement.)

I have attached statement to which reference is made as a matter of convenience and have shown detail of betterments to equipment for four years. If such detail is desired for as many years as equipment bettered is designated, the information will be cheerfully furnished.

No further detail is available for equipment bettered, except as shown by distribution of material and labor from our car shops.

Yours, truly,

W. H. CHAMBERS,
Comptroller.

[Statement referred to in Exhibit 4, filed in evidence as an exhibit on behalf of the Interstate Commerce Commission.]

1889, December 31st. Reconstruction:		
Roadway	$53,053.99	
Bridges	7,990.52	
Water stations	205.40	
Equipment	3,776.83	
Rails	18,030.05	
		$83,056.79
1892, March 31st. Land purchased:		
$10\frac{64}{100}$ acres	3,041.32	
91,609 yards sand	13,741.10	
Interest Jan., 1889, to Apr., 1892	3,272.58	
		20,055.00

1898, April 30th. Real estate from H. M. F.:		
Land at W. P. Bch. for right of way, etc		$8,696.60
1897, June 30th:		
Miami extension		381,549.97
Ocean pier		65,324.73
1903, June 30th. Property purchased from H. M. F.:		
San Sebastian marsh lands (St. Aug.)	$68,613.97	
Lane cottage (St. Aug.)	1,882.28	
Middleton Building (St. Aug.)	2,717.19	
Miller stable (St. Aug.)	8,849.24	
San Sebastian wharf (St. Aug.)	6,051.89	
		88,114.57
1894, December 31st. Equipment bettered:		
Passenger cars	615.49	
Baggage cars	90.80	
		706.29
1895, June 30th:		
Parlor cars	578.20	
Baggage and express cars	162.17	
Passenger cars	1,708.75	
Freight cars	248.97	
		2,698.09
1896, June 30th:		
Passenger cars	1,931.50	
Locomotives	2,158.95	
Freight cars	455.19	
Machinery and tools	3,284.17	
		7,829.81
1897, June 30th:		
Locomotives	589.77	
Machinery and tools	4,471.35	
Passenger cars	2,645.36	
Freight cars	1,382.72	
		9,089.20

No. 5.

[Filed in evidence as an exhibit on behalf of the Interstate Commerce Commission.]

(Testimony of Mr. Chambers, pp. 284 and 565, record.)

COMPARATIVE STATEMENT OF OPERATING REVENUES, JULY TO OCTOBER, INCLUSIVE, FISCAL YEARS 1909, 1910, 1911, AND 1912.

(From general ledger.)

	Fiscal year 1909, July to October, 1908, inclusive.	Fiscal year 1910, July to October, 1909, inclusive.	Fiscal year 1911, July to October, 1910, inclusive.	Fiscal year 1912, July to October, 1911, inclusive.
I. REVENUE FROM TRANSPORTATION.				
1. Freight revenue	$317,846.12	$343,846.78	$425,005.15	$489,436.87
2. Passenger revenue	195,712.49	231,904.45	262,754.44	318,733.79
3. Excess-baggage revenue	1,622.49	2,077.17	1,796.75	3,083.08
4. Parlor and chair car revenue	3,812.50			
5. Mail revenue	28,310.67	35,330.39	33,659.92	33,671.00
6. Express revenue	41,833.19	36,943.54	43,604.58	45,984.76
8. Other passenger-train revenue	1,472.76	92.87	220.10	
Total passenger-service train revenue (accounts 2-8)	272,764.10	306,348.42	342,035.79	401,472.63
9. Switching revenue	6,402.89	7,861.03	10,927.58	14,699.46
10. Special-service train revenue	101.50	76.20		124.00
11. Miscellaneous transportation revenue			5,962.17	
Total revenue from transportation	597,114.61	658,132.43	783,930.69	905,732.96
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION.				
13. Parcel-room receipts	75.40	68.70	79.10	111.55
14. Storage, freight	1,183.96	1,009.82	1,172.05	766.44
15. Storage, baggage	122.85	95.80	124.50	106.25
16. Car service	783.68	295.12	921.00	2,428.00
18. Rents of buildings and other property	7,056.22	4,268.09	4,698.49	6,288.33
19. Miscellaneous	2,979.21	10,453.71	7,929.89	10,488.27
21. Joint facilities revenue, credit		467.40	546.17	853.57
Total revenue from operations other than transportation	12,201.32	16,658.64	15,471.20	21,042.41
Total operating revenues	609,315.93	674,791.07	799,401.89	926,775.37

(Memoranda by Mr. Chambers.)

Not included:	
Station and train privileges	$25.00
Outside operations	303.33
Total corrected to read	926,447.04

No. 6.

(Testimony of Mr. Chambers, pp. 251, 289, and 565, record.)

FLORIDA EAST COAST RAILWAY,
Palm Beach, Jany. 23, '03.

Copy.

W. H. BEARDSLEY, Esq.,
26 Broadway, N. Y.

DEAR SIR: I have your favor of the 16th instant, accompanied by statement of the railway co. account Jany. 1st, 1903, from which it appears that the debit of the company on that date was $2,614,424.09. I believe I am correct in assuming that the new bonds draw interest from Jany. 1st. If so, you may credit the company with $3,000,000, amount paid for $6,000,000 of the bonds, thus leaving a balance to the credit of the company on Jany. 1st of $385,375.91.

Yours truly,

(Signed) H. M. FLAGLER.

R/R. Mr. W. H. CHAMBERS,
J. R. PARROTT, V. P.

No. 7.

(Testimony of Mr. Chambers, pp. 251, 289, and 565, record.)

FLORIDA EAST COAST RAILWAY,
Jan. 28th, 1903.

J. R. PARROTT,
Vice Prest., St. Augustine, Fla.

DEAR SIR: By direction of Mr. H. M. Flagler, I figured interest on the Florida East Coast Ry. Co. current account to Jan. 1, '03, and under that date charged the railway company with interest at the rate of 5% from July 1, '02 to Jan. 1, '03, $25,832.56. This leaves the balance of the current account on that date $1,088,990.59. Also following out Mr. Flager's instructions, under date of Jan. 1, '03, made certain entries covering:

Net earnings put in plant.
Sundry properties transferred to the ry. co.
P. & O. S. S. Co. stock and note.

I also credited the F. E. C. Ry. Co. covering purchase of $6,000,000, F. E. C. Ry. Co. 5% bonds of 1933 at 50, $3,000,000. This leaves the F. E. C. Ry. Co. with a credit on Mr. Flager's books on Jan. 1st, $385,575.91.

All the above as per statement which I enclose herewith. After Mr. Chambers has made his entries, will you kindly advise me if this balance agrees with Mr. Flager's account on the railway co.'s books.

Yours truly,

W. H. BEARDSLEY,
Treasurer.

ENCL.

[Statement referred to in No. 7, filed in evidence on behalf of the Interstate Commerce Commission as an exhibit.]

Fla. East Coast Ry. Co. In a/c with H. M. Flagler.

1902.			
July 1.	Balance as per statements, 184 da., $24,540.17.	$960,267.41	
Sept. 18.	Draft W. H. Chambers, G. A., 104 da., $1,227.78	85,000.00	
Dec. 5.	Draft W. H. Chambers, G. A., 26 da., $64.61	17,890.62	
1903.			
Jan. 1.	Interest to Dec. 31, '02, incl., 5 %	25,832.56	
	Balance		$1,088,990.59
		1,088,990.59	1,088,990.59
1903.			
Jan. 1.	Balance	1,088,990.59	
1.	Net earnings put in plant	580,573.34	
1.	Interest in capital stock, $1,000,000, 5 %, July 1, 1897, to Jan. 1, 1903, put in plant	275,000.00	
1.	Sundry properties transferred to F. E. C. Ry. Co.	111,320.23	
	Mayport Terminal Co. stk	$10,160.00	
	Mayport Terminal Co.	13,045.66	
	St. Sebastian marsh lands	68,613.97	
	Lane cottage	1,882.28	
	Middleton building	2,717.19	
	Miller stable	8,849.24	
	St. Sebastian wharf	6,051.89	
1.	Peninsular & Occidental S. S. Co.	558,539.93	
	Representing 7,500 shs. stock	556,747.36	
	Bal. due on note July 1, 1902	1,792.57	
1903.			
Jan. 1.	Amount paid F. E. C. Ry. Co. for $6,000,000 F. E. C. Ry. 5 % bonds of 1933 @ 50		3,000,000.00
	Balance	385,575.91	
		3,000,000.00	3,000,000.00
1903.			
Jan. 1.	Balance		385,575.91

No. 8.

[Filed in evidence as an Exhibit on behalf of the Interstate Commerce Commission.]

(Testimony of Mr. Chambers (43), p. 261, record.)

Interest charged Key West extension to June 30th, 1910.

Interest on money borrowed	$1,428,335.27
Discount on collateral trust notes	203,200.00
Total	1,631,535.27

The solicitor for the Interstate Commerce Commission presented and called the attention of the court to chapter 1302, Revised Statutes of the United States, being an act of the Fifty-seventh Congress "To provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans."

Approved June 28, 1902.

No. 9.

(Testimony of Mr. Parrott, p. 675, record.)

ARTICLES OF ASSOCIATION OF FLORIDA COAST & GULF RAILWAY COMPANY.

We, the undersigned, do hereby make and sign articles of association for the purpose of organizing the Florida Coast & Gulf Railway Company, under the provisions of the laws of the State of Florida, to construct, operate, and maintain a railroad for public use in the conveyance of persons and property, or to operate and maintain a railroad now constructed or partly constructed for public use in the conveyance of persons and property.

First. The name of the company shall be "Florida Coast & Gulf Railway Company."

Second. The places from and to which the road is to be constructed, maintained, and operated are from a point on the westerly side of the St. Johns River at or near the city of Jacksonville, in Duval County, Florida, to a point on the waters of the Gulf of Mexico at or near the city of Tampa, Hillsborough County, Florida.

Third. Said road is about three hundred and twenty-five miles in length.

Fourth. The name of the counties through and into which said road, with its main line and branches, runs are Duval, St. Johns, Putnam, Volusia, Brevard, Orange, Osceola, Dade, Polk, and Hillsborough, all of said counties being in the State of Florida.

Fifth. The amount of capital stock is one million dollars ($1,000,000), divided into ten thousand shares of one hundred dollars each.

Sixth. The number of directors shall be five (5), and the directors for the first year, and their places of residence, are: John Bushnell, Plainfield, in the State of New Jersey; George W. Colton, Brooklyn, in the State of New York; George Chesebro', Brooklyn, in the State of New York; W. A. Harris, Brooklyn, in the State of New York; and L. B. Dryer, New York City, in the State of New York.

(Sd.) JOHN BUSHNELL, [SEAL.]
Plainfield, N. J.

" GEO. W. COLTON, [SEAL.]
Brooklyn, N. Y.

" GEO. CHESEBRO', [SEAL.]
Brooklyn, N. Y.

" W. A. HARRIS, [SEAL.]
Brooklyn, N. Y.

" L. B. DRYER, [SEAL.]
New York City, N. Y.

STATE OF FLORIDA,
Office of the Secretary of State:

I, H. Clay Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true copy of an original document filed in this office on the 28th day of May, 1892, and now remaining on file and of record in this office, entitled Articles of Association of Florida Coast & Gulf Railway Company except a certain stock subscription list and a certain affidavit attached to and forming a part of the said articles of association.

Given under my hand and the great seal of the State of Florida at Tallahassee, the capital, this 22nd day of March, 1912.

[SEAL.] H. CLAY CRAWFORD,
Secretary of State.

No. 10.

I, Geo. W. Colton, do hereby certify that at a general meeting of the stockholders of the Florida Coast & Gulf Railway Company, held at St. Augustine, Florida, at the office of the company, on the 6th day of October, 1892, at 10 o'clock in the morning, the following resolution was offered and passed unanimously:

Be it resolved by the stockholders of this company, at a general meeting at which all the stockholders, either in person or by proxy, are present, That the name of this corporation be changed from Florida Coast & Gulf Railway Company to Jacksonville, St. Augustine & Indian River Railway Company.

And I further certify that the foregoing resolution is a true and exact copy, as made by me from the records of the Florida Coast & Gulf Railway Company in my possession as secretary of that corporation.

Witness my hand and official seal this 10th day of October, A. D. 1892.

(Sd.) GEO. W. COLTON, [SEAL.]
Secretary.

Dated ST. AUGUSTINE, FLA.,
October 10th, 1892.

STATE OF FLORIDA,
Office of the Secretary of State:

I, H. Clay Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and correct copy of an original certificate now remaining on file and of record in this office, and that the same was filed in this office on the 29th day of October, 1892.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this 22nd day of March, 1912.

[SEAL.] H. CLAY CRAWFORD,
Secretary of State.

No. 11.

ST. AUGUSTINE, FLORIDA, *April 20, 1893.*

I hereby certify that the following resolution was passed by a two-thirds vote of all the directors of the Jacksonville, St. Augustine & Indian River Railway Company at a meeting duly called and held at St. Augustine, Florida, on the 19th day of April, 1893, and that said resolution was duly recorded in the records of this company's proceedings:

Be it resolved, That the line of this company be changed so as to run and extend from some point on Biscayne Bay in Dade County, on and across the Florida Keys to the island and city of Key West, in Monroe County, Florida, and that the line from the said point aforesaid, on Biscayne Bay westwardly at or to a point near the city of Tampa, in Hillsborough County, Florida, as provided in said company's charter, shall be considered as a branch to the main line.

(Sd.) H. S. JENISON, [SEAL.]
Asst. Secretary.

STATE OF FLORIDA,
Office of the Secretary of State:

I, H. Clay Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and correct copy of an original certificate now remaining on file and of record in this office, and that the same was filed in this office on the 31st day of April, 1893.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this 22nd day of March, 1912.

[SEAL.] H. CLAY CRAWFORD,
Secretary of State.

No. 12.

Resolved, That the name of this corporation be changed, and that the name of the corporation shall be "Florida East Coast Railway Company," instead of "Jacksonville, St. Augustine and Indian River Railway Company."

I hereby certify that the foregoing resolution was adopted at a general meeting of the stockholders of the Jacksonville, St. Augustine and Indian River Railway Company held at St. Augustine, Florida, on the 7th day of September, A. D. 1895, as appears of record in the office of the secretary of this company.

Witness my hand and seal of the Jacksonville, St. Augustine and Indian River Railway Company, this 10th day of September, A. D. 1895.

(Sd.) H. S. JENISON, [SEAL.]
Assistant Secretary.

STATE OF FLORIDA,
Office of the Secretary of State:

I, H. Clay Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and correct copy of an original certificate and resolution now remaining on file and of record in this office, and that the same was filed in this office on the 13th day of September, 1895.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this 22nd day of March, 1912.

[SEAL.] H. CLAY CRAWFORD,
Secretary of State.

No. 13.

(Referred to on pages 644 and 675 of the record, Parrott exhibit 13.)

LAWS OF FLORIDA.

CHAPTER 5595.—[No. 224.]

AN ACT To encourage and secure the construction of a line of railway from the mainland of Florida to Key West; to provide for a fair and equitable assessment of taxes of the corporation constructing it; and to grant right of way over the submerged and other lands belonging to the State, and over the waters of the State, and to authorize the filling of the submerged lands, and to construct buildings, docks, and depots thereon.

Whereas the construction of the Panama Canal renders it desirable and important for the proper development of the State of Florida, and to secure the State a fair proportion of the traffic passing through the said canal, that a line of railroad should be constructed from the mainland of the State to the island of Key West; and

Whereas to connect the mainland with the island of Key West will require the construction of nearly 150 miles of railroad, a large portion of which must necessarily be over rocky islands and through the waters of the State; and

Whereas it is estimated that the cost of properly constructing and equipping said line of railroad will aggregate many millions of dollars; and

Whereas it is desirable that said line of railway shall be constructed as speedily as possible, and that pledges shall be given by the State of Florida that will encourage the investment of the capital needed for the construction of said great highway of traffic: Therefore

Be it enacted by the Legislature of the State of Florida:

SECTION 1. That any existing railroad corporation in this State which shall within three months after the passage of this act, and its approval by the governor, file in the office of the secretary of state a plat showing a surveyed route, and line of railroad definitely located and described, from the mainland of Florida to the island of Key West, shall on complying with the other provisions of this act have the right to construct and operate a line of railroad from said mainland of Florida to the island of Key West.

SEC. 2. That the corporation so filing the plat as set forth in the first section of this act shall begin the actual work of construction within six months from the filing of the same, and shall have said railroad completed and in operation to Key West within seven years after the passage of this act.

SEC. 3. That from the passage of this act the assessment for taxes per mile of the entire line of road within the State of Florida of the corporation constructing said line of road from the mainland of Florida

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to the island of Key West shall not be fixed at a greater sum per mile than the average assessment per mile of all other lines of railroad operated within the State of Florida.

SEC. 4. That the line of railroad from the mainland to the island of Key West shall be held and considered for the purpose of assessment of taxes the same as if it had been built on the mainland and at no greater expense.

SEC. 5. That the corporation so filing the plat as set forth in the first section of this act shall within three months after the filing of said plat as set forth in section 1, execute to the State of Florida, a good and sufficient bond with sufficient sureties thereon, in the sum of $25,000 conditioned for the letting of contracts and the employment of labor in the actual construction of the work of said road connecting the mainland of Florida with the island of Key West within six months after the filing of the plat showing a surveyed route and line of railroad definitely located and described, the sum of money mentioned in the said bond to be forfeited to the State of Florida if the actual work of construction on said line of railroad from the mainland of Florida to Key West is not actually begun and prosecuted in good faith within six months from date of the passage of this act and its approval by the governor.

SEC. 6. That the corporation constructing said line of railroad from the mainland of Florida to the island of Key West is hereby granted a right of way for the width of 200 feet on each side of the railroad over and through the land owned by the State of Florida on the line of its road and the right of way over the waters of the State 200 feet on each side of the roadbed, and shall have the right to fill in, occupy, and use the submerged lands of the State on the line of its road for 200 feet on each side of the line of roadbed and to construct trestles, concrete arches, and drawbridges over and on such submerged lands, build docks, warehouses, depots, and other buildings over and on said submerged lands, and hold and occupy, and use for its corporate purposes all lands made by filling in the submerged lands on its line of road and trestles over and through the waters connecting the mainland with the island of Key West: *Provided*, That any corporation, firm, person or persons constructing any new line of railway as provided for in this act or any previous act, shall neither have or claim from this State any land or grant of land for such extension or for any part thereof, from the mainland to the island of Key West, except the 200 feet on each side of aforesaid railway, as provided in this act.

SEC. 7. That all laws or parts of laws in conflict with the provisions of this act be, and the same are, hereby repealed.

SEC. 8. That the provisions of this act shall take effect from and after its passage and approval by the governor.

Approved May 3, 1905.

LOSE IN CENTER

No. 14.

(Testimony of Mr. Parrott, p. 674, Record.)

STATE OF FLORIDA,
County of Duval, ss:

On this day before me personally appeared H. S. Jenison, assistant secretary of the Florida East Coast Railway Co., to me personally known, who being duly sworn on oath says that he is the assistant secretary of said railway company; that the attached papers, being minutes of special meeting of stockholders of said railway company, held July 10, 1905; minutes of meeting of board of directors of said company, held July 14, 1905; and minutes of meeting of stockholders of July 24, 1905, constitute a full, true, and correct copy of such minutes pertaining to the matter of the extension of said railroad to Key West.

H. S. JENISON.

Subscribed and sworn to before me this 15th day of April, A. D. 1912.

[SEAL.] J. F. HORNE,
Notary Public, State of Florida at Large.

[Minutes of stockholders' meeting referred to in Exhibit No. 14.]

A special meeting of the stockholders of the Florida East Coast Railway Company was held at the general offices of the said company in St. Augustine, Florida, on the 10th day of July, A. D. 1905, pursuant to a special call dated the 6th day of June, A. D. 1905, as follows:

OFFICE FLORIDA EAST COAST RAILWAY COMPANY,
St. Augustine, Florida, June 6th, 1905.

To the stockholders of the Florida East Coast Railway Company:

You are requested to meet at the general offices of the Florida East Coast Railway Co. on Monday, the 10th day of July, A. D. 1905, for the purpose of considering the construction of line of railway from the mainland of Florida to Key West, under and pursuant to the act of the Legislature of Florida, approved May 3rd, A. D. 1905, and for such other business as may be brought before you.

J. C. SALTER,
Secretary Florida East Coast Ry. Co.

There were present in person and by proxy 9,999 shares of stock of said company, the total number of shares of said stock being 10,000, and representing more than four-fifths of the entire stock of said company, the following preamble and resolutions were adopted:

Whereas the Legislature of the State of Florida, by an act approved by the governor May 3d, A. D. 1905, has offered certain rights, privileges, and franchises to any existing railroad corporation in

this State constructing a line of railroad from the mainland of Florida to Key West; and,

Whereas it is the judgment of the stockholders of the Florida East Coast Railway Company that it is to the interest of said company to extend the railroad of said company from the mainland of Florida to Key West, and to construct the same under and pursuant to the act of the Legislature of Florida hereinbefore recited:

Be it therefore resolved, That the president and board of directors of this company be, and the same are hereby, authorized to extend the line of railroad of the Florida East Coast Railway Co. from the mainland of Florida to Key West, under the conditions and pursuant to the act of the legislature approved May 3d, A. D. 1905, hereinbefore recited.

Be it further resolved, That the president and board of directors of this company be authorized to file in the office of the secretary of state at Tallahassee a plat showing a surveyed route and line of railroad definitely located and described from the mainland of Florida to the island of Key West, pursuant to section one (1) of the act of the Legislature of Florida approved May 3d, A. D. 1905.

Be it further resolved, That the president of this company be, and is hereby, authorized to execute a good and sufficient bond with sufficient sureties thereon in the sum of twenty-five thousand dollars, payable to the State of Florida, as required by section five (5) of the act of the legislature approved May 3rd, A. D. 1905, to be forfeited to the State of Florida if the actual work of construction of the railroad from the mainland of Florida to Key West is not actually begun and prosecuted in good faith within six months from the date of the approval of said act, as provided by section five (5).

The vote was as follows:

Ayes, 9,999 shares.

Nays, no shares.

A special meeting of the stockholders of the Florida East Coast Railway Company having been held at the general offices of said company at St. Augustine, Florida, on the 10th day of July, A. D., 1905, and 9,999 shares of stock being present in person and by proxy out of the total of 10,000 shares, and the stock present being more than four-fifths of all the stock of the company, the undersigned stockholders, and attorneys and agents of stockholders duly authorized in writing to vote said stock and to sign the names of their principals to their consent to this meeting, with the numbers of shares of stock owned and held by each, do hereby give this, their written consent, to the meeting of the stockholders held this 10th day of July, A. D. 1905, on the record of said meeting, pursuant to section 2144 of the Revised Statutes of Florida, authorized the same, and hereby declare the acts of said meeting valid and binding, as provided by law.

The minutes of this meeting were then presented, read, and approved.

There being no further business, the meeting thereupon adjourned to July 24, 1905.

J. R. PARROTT, *Chairman.*
H. S. JENISON, *Acting Secretary.*

A true copy.
[SEAL.]
H. S. JENISON,
Assistant Secretary.

[Minutes of directors' meeting referred to in Exhibit No. 14.]

(Read and approved Apl. 4, '06.)

JULY 14, 1905.

Pursuant to the following call:

JUNE 30, 1905.

A special meeting of the board of directors of the Florida East Coast Railway Company will be held on the 14th day of July, A. D. 1905, for the purpose of considering the construction of a line of *railway* from the mainland of Florida *to Key West*, under and pursuant to the act of the Legislature of Florida approved May 3d, A. D. 1905, and for the consideration of such other business as may be brought before the meeting.

J. C. SALTER, *Secretary.*

a copy of which was duly mailed to each of the directors, a special meeting of the board of directors of the Florida East Coast Railway Company was held at the office of said company on the 14th day of July, A. D. 1905, there being present Messrs. H. M. Flagler, J. R. Parrott, and W. R. Kenan, jr., constituting a majority of the board.

The meeting was called to order by Mr. H. M. Flagler, who was made chairman, and J. C. Salter acted as secretary.

The reading of the minutes of the meeting of the board of directors held April 7th, 1905, was, upon motion duly made and seconded, waived.

The following resolution was then offered, and, upon motion duly seconded, the same was unanimously adopted:

Resolved, That pursuant to the resolution adopted at a meeting of the stockholders of this company at St. Augustine, Florida, at the general offices of said company, on the 10th day of July, A. D. 1905, authorizing the extension of the line of railroad of this company from the mainland of Florida *to Key West*, under and pursuant to the act of the legislature approved May 3d, A. D. 1905, the president of this company be, and is hereby, authorized and required to file in the office of the secretary of state within three months from the 3rd day of May, A. D. 1905, a plat showing a surveyed route and line of railroad definitely located and described from the mainland of Florida to the island of Key West.

Be it further resolved, That the president of this company be, and is hereby, authorized to execute to the State of Florida a good and

sufficient bond, with sufficient sureties thereon, in the sum of twenty-five thousand dollars, conditioned for the letting of contracts and employment of labor in the actual construction of the work of said road connecting the mainland of Florida with the island of Key West, within six months after the filing of the plat showing a surveyed route and line of railroad definitely located and described, the sum of money mentioned in the said bond to be forfeited to the State of Florida if the actual construction of the said line of railroad from the mainland of Florida to Key West is not actually begun and prosecuted in good faith within six months from the date of the passage of the act and its approval by the governor.

Be it further resolved, That the Florida East Coast Railway Company, a corporation existing in this State, on the day of the passage and approval of the act of the Legislature of Florida, approved May 3rd, A. D. 1905, hereby agrees to construct said railroad from the mainland of Florida to Key West under and pursuant to the provisions of said act of the Legislature of Florida approved May 3rd, A. D. 1905, in consideration of the rights, privileges, and franchises conferred by said act.

Be it further resolved, That these resolutions be submitted to the stockholders of the Florida East Coast Railway Company at an adjourned meeting of said stockholders to be held at the general offices of said company at St. Augustine, Florida, on the 24th day of July, 1905, for approval, confirmation, and ratification of said stockholders.

There being no further business before the board, the meeting thereupon adjourned.

J. C. SALTER, *Secretary*.

A true copy.
[SEAL.]
H. S. JENISON,
Assistant Secretary.

[Second meeting of stockholders referred to in Exhibit No. 14.]

ADJOURNED MEETING OF STOCKHOLDERS.

At an adjourned meeting of the stockholders of the Florida East Coast Railway Company, at St. Augustine, Florida, on the 24th day of July, A. D. 1905, pursuant to adjournment, the following resolutions were adopted:

Resolved, That the stockholders of the Florida East Coast Railway Company, representing more than four-fifths of the entire capital stock of said company, do hereby ratify and confirm the resolutions adopted by the directors of this company, held on the 14th day of July, A. D. 1905, authorizing the president of this company to file in the office of the secretary of state within three months from the third day of May, A. D. 1905, a plat showing a surveyed route and

line of railroad definitely located and described from the mainland of Florida to the island of Key West.

Be it further resolved, That the stockholders of this company, representing more than four-fifths of the entire capital stock of said company, hereby ratify, confirm, and approve the further resolution of said board of directors authorizing the president of this company to execute to the State of Florida a good and sufficient *bond* with sufficient sureties thereon, in the sum of twenty-five thousand dollars, as required by section five (5) of the act of the Legislature of Florida, approved May 3rd, A. D. 1905, for the construction of the line of *railroad* from the mainland of Florida to the island of Key West.

Be it further resolved, That the stockholders of this company representing more than four-fifths of the entire stock of said company, hereby fully confirm, ratify, and approve all the actions of the board of the directors and the resolutions passed by said board at their meeting on the 14th day of July, A. D. 1905, in relation to the construction of said line of railroad from the mainland of Florida to the island of Key West, and hereby bind the said Florida East Coast Railway Company in all and singular the acts and resolutions of said board of directors in relation to the construction of said line of railroad from the mainland of Florida to Key West.

An adjourned meeting of the stockholders of the Florida East Coast Railway Company having been held at the general offices of said company at St. Augustine, Florida, on the 24th day of July, A. D. 1905, and 9,999 shares of stock being present in person and by proxy, out of a total of 10,000 shares, and the stock present being more than four-fifths of all the stock of the company, the undersigned stockholders, and attorneys and agents of stockholders, duly authorized in writing to vote said stock, and to sign the names of their principals, to their consent to this meeting, with the number of shares of stock owned and held by each, do hereby give this their written consent to the meeting of the stockholders held this 24th day of July, A. D. 1905, on the record of said meeting, pursuant to section 2144 of the Revised Statutes of Florida, authorized the same, and hereby declare the acts of said meeting valid and binding, as provided by law.

The minutes of this meeting were then presented, read, and approved.

There being no further business, the meeting thereupon adjourned.

J. R. PARROTT, *Chairman*.
H. S. JENISON, *Acting Secretary*.

A true copy.
[SEAL.]
H. S. JENISON,
Assistant Secretary.

Burnside Exhibit No. 1.

(Testimony of Mr. Burnside, p. 736, record.)

FLORIDA EAST COAST RAILWAY.

Statement of operating revenue, Homestead to Knights Key, for fiscal year ending June 30, 1911.

Freight revenue	$8,411.29
(This amount was arrived at by ascertaining the actual earnings of the line south of Homestead, by a mileage prorate of revenue on all shipments forwarded to or from each station on that line, for the months of July, 1910, and March, 1911; and by dividing the freight revenue of the entire road for the year in the proportion which the revenue south of Homestead bears to the revenue of the entire road for the two months named.)	
Passenger revenue	67,487.00
(The passenger rate per mile is three cents north of Homestead and four cents south of that station. The carrier's books show a segregation of passenger earnings south of Homestead and these figures were taken, after deducting $2,640.77 on account of errors in the statement of conductors cash collections.)	
Excessive baggage revenue	486.60
(This amount was arrived at by dividing the excess baggage revenue for the entire road on a basis determined by the ratio of passenger revenue of the "Key West extension" to the passenger revenue of the entire road.)	
Mail revenue	13,919.10
(This amount was arrived at by dividing the mail revenue for the entire road in the proportion of the total operated mileage north and south of Homestead.)	
Express revenue	$6,822.74
(This amount was arrived at by taking that proportion of the entire express revenue of the road which the combined freight revenue and passenger revenue of the "Key West extension" bears to the combined freight revenue and passenger revenue of the entire road.)	
Other passenger train revenue	644.99
(This amount was arrived at by taking that proportion of the other passenger train revenue of the entire road which the passenger revenue of the "Key West extension" bears to the passenger revenue of the entire road.)	
Wharfage	7.54
(The above amount was reported by agents south of Homestead.)	
Storage	2.68
(The above amount was reported by agents south of Homestead.)	
Rents of buildings and other property	6.00
(The above amount was reported by agents south of Homestead.)	
Total	97,787.94

Burnside Exhibit No. 2.

(Testimony of Mr. Burnside, p. 737, record.)

FLORIDA EAST COAST RAILWAY.

Income from lines north of Homestead for fiscal year ending June 30, 1911.

Gross operating revenues of entire road, as reported to the commission			$4,183,384.80	
Deductions:				
Revenues from line south of Homestead		$97,787.94		
Revenues from carrying construction material for extension		98,514.26		
Revenues from carrying company's employees for extension		8,993.07		
Total deductions from revenue			205,295.27	
			3,978,089.53	
Operating expenses of entire road, as reported to the commission		2,603,710.19		
Deductions:				
Operating expenses line south of Homestead (62.24 per cent of $97,787.94 [1])	$60,863.21			
Expense hauling construction material for extension	98,514.26			
Expense hauling company's employees for extension	8,993.07			
Total deductions from operating expenses		168,370.54		
Net operating revenues from lines north of Homestead			2,435,339.65	$1,542,749.88
Deductions:				
Taxes ($173,641.13, less $14,210.78 south of Homestead)			159,430.35	
Loss on dining and special car operation			2,107.00	
Hire of equipment			97,480.82	
Rent of joint yards and terminals			10,823.52	
				269,841.69
Net operating income from lines north of Homestead				1,272,908.19

[1] The ratio of the entire operating expenses to the entire operating revenues for the fiscal year ending June 30, 1911, was 62.24 per cent, as reported by the carrier.

Burnside Exhibit No. 3.

(Testimony of Mr. Burnside, p. 739, record.)

Comparison of statistics of various railway companies operating in southeastern territory as reported to the Interstate Commerce Commission in annual reports for the fiscal year ending June 30, 1911.

	Atlantic Coast Line Railway.	Seaboard Air Line Railway.	Southern Railway.	Florida East Coast Railway.
Ratio of operating revenue to investment in road and equipment.....per cent..	19.9	14.2	15.2	[1] 24.4
Ratio of operating expenses to operating revenues.....do....	64.66	66.48	67.82	62.24
Ratio of loss and damage expense to total operating expenses per cent..	.0193	.0145	.0193	.0055
Ratio of empty freight car movement to loaded movement per cent..	.47—	.43+	.41—	.53+
Average receipts per ton per mile.....	$0.01215	$0.01160	$0.00966	$0.01777

[1] Road and equipment investment north of Homestead (including all equipment), to June 30, 1911, as reported by the carrier, $16,314,133.97; gross operating revenues north of Homestead (estimated), $3,978,089.53.

Burnside Exhibit No. 4.

(Testimony of Mr. Burnside, p. 740, record.)

FLORIDA EAST COAST RAILWAY.

Earnings per ton-mile, at new rates, on shipments of vegetables during the fiscal year ending June 30, 1911, based upon Exhibit 14 of the petition.

Station.	Distance from Jacksonville.	Crates.	Crates 1 mile.	Revenue at new rates.
	Miles.			
South Jacksonville	2	14	28	$2.03
Hogan	6	8	48	.32
Pablo Beach	18	3	54	.27
East Mayport	25	10	250	1.21
Sunbeam	10	16	160	1.60
Greenland	13	7	91	.84
Bayard	15	488	7,320	65.87
Durbin	20	765	15,300	62.62
St. Augustine	36	7,413	266,868	306.01
Hurds	44	5	220	.80
Elkton	47	55,182	[1] 2,593,554	3,897.28
Armstrong	49	7,064	[1] 346,136	521.40
Spuds	51	9,042	[1] 461,142	647.67
Hastings	54	306,664	[1] 16,559,856	23,693.70
Orange Mills	57	1,600	[1] 91,200	146.12
East Palatka	62	46,880	[1] 2,906,560	3,812.37
San Mateo	66	1,555	[1] 102,630	73.95
Yelvington	67	5,998	[1] 401,866	440.60
Roy	69	4,816	[1] 332,304	347.41
Dinner Island	76	2	[1] 152	.25
Neoga	80	56	[1] 4,480	5.04
Espanola	82	961	[1] 78,802	86.40
Bunnell	87	2,554	[1] 222,198	218.63
Dupont	90	4,380	[1] 394,200	340.09
Ormond	104	200	20,800	18.76
Daytona	110	746	82,060	77.33
Blake	113	144	16,272	10.46
Port Orange	115	368	42,320	35.11
New Smyrna	125	1,802	225,250	206.19
Indian Springs	134	14	1,876	.44
Rogers	140	24	3,360	1.57
Lake Helen	145	9	1,305	1.57
Orange City	152	26	3,952	4.14
Ariel	133	281	37,373	27.89
Oak Hill	136	446	60,656	44.07
Lyrata	143	19	2,717	1.22
Titusville	154	365	56,210	40.78
La Grange	157	132	20,724	18.35
Mims	159	95	15,105	10.84
Turnbull	162	40	6,480	4.63
Cow Creek	176	116	20,416	10.12
Celery City	179	321	57,459	26.97
Kalamazoo	181	18	3,258	1.42
Osteen	184	142	26,128	13.94
Garfield	188	137	25,756	18.37
Enterprise	191	85	16,235	11.72
Frontenac	165	137	22,605	12.73
Sharpes	168	42	7,056	3.85
City Point	169	402	67,938	36.35
Cocoa	173	332	57,436	29.86
Bonaventure	175	124	22,196	16.35
Eau Gallie	190	233	44,270	36.23
Melbourne	194	3	582	.25
Malabar	200	50	10,000	3.37
Grant	206	14	2,884	1.98
Roseland	212	580	122,960	92.94
Sebastian	215	2,390	513,850	371.78
Wabasso	219	1,783	390,477	280.44
Quay	222	514	114,108	84.81
Gifford	225	146	32,850	24.03
Vero	228	39	8,892	6.68
Oslo	231	34	7,854	1.18
Viking	234	6	1,404	.25
A-236	236	22	5,192	1.87
A-237	237	4	948	.66

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Earnings per ton mile, at new rates, on shipments of vegetables during the fiscal year ending June 30, 1911, based upon Exhibit 14 of the petition—Continued.

Station.	Distance from Jacksonville.	Crates.	Crates 1 mile.	Revenue at new rates.
	Miles.			
St. Lucie	238	6	1,428	$0.80
Fort Pierce	242	2,285	552,970	253.61
Carson	246	148	36,408	4.38
A-247	247	420	103,740	58.80
A-248	248	4	992	.90
Walton	252	2	504	.34
A-256	256	655	167,680	67.67
Jensen	257	56	14,392	5.01
Stuart	262	435	113,970	44.05
A-262	262	21	5,502	3.78
Fruita	269	87	23,403	9.71
Gomez	272	315	85,680	51.38
Hobe Sound	275	16	4,400	3.04
Likely	278	457	127,046	68.75
A-279	279	5	1,395	.67
Jupiter	283	32	9,056	5.70
Prairie	290	473	137,170	80.06
Riviera	295	19	5,605	1.91
West Palm Beach	299	2,549	762,151	428.06
Lantana	308	175	53,900	25.07
Hypoluxo	309	16,776	5,183,784	2,936.68
Boynton	312	40,651	12,683,112	6,634.38
A-314	314	132	41,448	24.54
Delray	317	93,602	29,671,834	15,300.65
Yamato	321	8,172	2,623,212	1,515.11
Boca Ratone	325	27,442	8,918,650	3,386.72
Deerfield	327	67,511	22,076,097	12,028.92
A-330	330	9,904	3,268,320	1,690.53
Pompano	333	151,402	50,416,866	27,019.39
Colohatchee	338	73,158	24,727,404	12,628.02
Fort Lauderdale	341	91,363	31,154,783	16,091.90
Dania	345	231,783	79,965,135	41,374.55
A-347	347	20,769	7,206,843	4,741.02
Hallandale	351	154,317	54,165,267	28,023.10
Ojus	354	69,868	24,733,272	12,643.28
Fulford	355	82,934	29,441,570	14,871.30
Arch Creek	357	128,476	45,865,932	24,655.11
Biscayne	359	2,040	732,360	433.50
Little River	361	134,560	48,576,160	24,840.39
Lemon City	362	26,052	9,430,824	4,809.64
Buena Vista	363	1,062	385,506	265.50
Miami	366	98,303	35,978,898	18,910.04
Cocoanut Grove	371	5,502	2,041,242	1,027.20
Larkin	374	17,014	6,363,236	3,118.60
Kendal	377	4,559	1,718,743	809.34
A-377	377	1,825	688,025	347.55
Benson	378	959	362,502	206.19
Rockdale	380	8,938	3,396,440	1,683.40
Perrine	382	74,196	2,901,672	14,658.50
Peters	383	544	208,352	119.46
Goulds	386	115,551	44,602,686	21,078.24
Black Point	387	474	183,438	84.91
Princeton	388	7,282	2,825,416	1,453.94
Naranja	389	51,072	19,867,008	9,990.67
Modella	391	3,935	1,538,585	804.75
Homestead	394	53,573	21,107,762	10,120.26
Detroit	395	16,175	6,389,125	2,988.06
			670,613,534	380,602.22

	Pound-miles.	Ton-miles.
646,118,454 crates 1 mile, at 50 pounds per crate	32,305,922,700	
24,495,080 crates 1 mile, at 92½ pounds per crate (marked [1])	2,265,794,900	
	34,571,717,600	17,285,859
Total revenue at new rates		$380,602.22
Revenue per ton per mile at new rates		$0.0220

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Burnside Exhibit No. 5.

(Testimony of Mr. Burnside, p. 741, record.)

FLORIDA EAST COAST RAILWAY.

Earnings per ton-mile, at new rates, on shipments of citrus fruits during the fiscal year ending June 30, 1911, based upon Exhibit 15 of the petition.

Station.	Distance from Jacksonville.	Crates.	Crates 1 mile.	Revenue at new rates.
	Miles.			
Sunbeam	10	2	20	$0.31
Greenland	13	1	13	.34
Durbin	20	9	180	1.89
St. Augustine	36	49	1,764	9.66
Hurds	44	5	220	1.20
Spuds	51	9	459	1.89
Hastings	54	12,888	695,952	1,457.68
East Palatka	62	2,663	165,106	269.41
Palatka	64	215	13,760	27.42
San Mateo	66	9,566	631,356	1,146.60
Espanola	82	39	3,198	9.81
Dupont	90	126	11,340	18.98
Harwood	97	392	38,024	58.80
Ormond	104	12,467	1,296,568	1,642.16
Holly Hill	107	5,690	608,830	784.40
Daytona	110	2,881	316,910	413.86
Blake	113	9,430	1,065,590	1,311.07
Port Orange	115	5,379	618,585	812.27
Spruce Creek	119	184	21,896	29.44
Turnbull Bay	121	255	30,855	43.35
New Smyrna	125	12,292	1,536,500	1,989.41
Glencoe	128	6,058	811,424	1,028.85
Indian Springs	134	101	13,534	17.17
Lake Helen	145	19,298	2,798,210	2,912.34
Orange City	150	12,747	1,912,050	2,107.64
Hawks Park	127	9,238	1,173,226	1,569.22
A-130	130	205	26,650	36.90
Hucomer	131	8	1,048	1.10
Oak Hill	136	23,325	3,172,200	3,534.42
A-138	138	34,975	4,826,550	4,168.06
Wiley Avenue	150	20,671	3,100,650	3,157.34
Lyrata	143	1,717	245,531	258.78
Titusville	154	10,591	1,631,014	1,808.81
La Grange	157	35,812	5,622,484	5,435.99
Mims	159	16,602	2,639,718	2,665.50
Turnbull	162	746	120,852	141.74
Osiery City	177	1,110	196,470	183.69
Orteen	184	563	103,592	87.25
Garfield	188	553	103,964	108.25
Pritchards	158	1,954	308,732	333.43
Frontenac	165	15	2,475	2.85
A-166	166	649	107,734	102.15
Sharpes	168	1,682	282,576	306.92
City Point	169	5,357	905,333	951.00
Spratts Siding	170	8	1,360	1.51
A-170	170	73	12,410	13.87
A-171	171	138	23,598	26.22
Cocoa	173	131,075	22,675,975	22,183.34
Rockledge	175	63	11,025	11.97
Bonaventure	179	5,708	1,021,732	900.75
Eau Gallie	190	12,734	2,419,460	2,561.23
Melbourne	194	229	44,426	43.81
A-195	195	3	585	.54
Tillman	197	102	20,094	20.40
Malabar	200	1,288	257,600	256.76
Valkaria	203	39	7,917	8.43
Grant	206	258	53,148	51.96
Micco	209	12,425	2,596,825	763.25
Roseland	212	1,941	411,492	415.50
Sebastian	215	8,816	1,895,440	1,627.09
Wabasso	219	5,575	1,220,925	1,118.91
Quay	222	2,254	500,388	487.64
A-223	223	120	26,760	26.40
Gifford	225	163	36,675	35.82
Vero	228	6,236	1,421,808	1,349.74
Oslo	231	3,643	841,533	801.12
A-234	234	21	4,914	4.62
Viking	234	3,958	926,172	858.92
A-236	236	1,415	333,940	297.20
A-237	237	3,244	768,828	711.68

D CLOSE IN CENTER

Earnings per ton-mile, at new rates, on shipments of citrus fruits during the fiscal year ending June 30, 1911, based upon Exhibit 15 of the petition—Continued.

Station.	Distance from Jacksonville.	Crates.	Crates 1 mile.	Revenue at new rates.
	Miles.			
St. Lucie	238	47	11,186	$10.34
Fort Pierce	242	22,687	5,490,254	4,725.78
Carson	246	8,704	2,141,184	1,942.73
A-247	247	7	1,729	1.61
Eldred	247	1,017	251,199	234.19
Ankona	249	636	158,364	141.81
A-250	250	1	250	.23
A-251	251	15	3,765	3.45
Walton	252	22	5,544	5.76
Eden	254	1,192	302,768	264.98
A-254	254	58	14,732	13.34
Jensen	257	2,768	711,376	625.24
A-257	257	2,673	686,961	550.81
Stuart	262	2,982	781,284	578.02
A-262	262	102	26,724	25.31
Gomez	272	2,809	764,048	673.06
Hobe Sound	275	718	197,450	175.65
Jupiter	283	6,177	1,748,091	1,154.81
Prairie	290	1,323	383,670	250.53
Riveria	295	145	42,775	38.25
West Palm Beach	299	525	156,975	128.70
A-300	300	25	7,500	6.58
Lantana	308	182	56,056	37.31
Hypoluxo	309	1,498	462,882	323.90
Boynton	312	320	99,840	83.14
Delray	317	5,898	1,869,666	1,257.06
Yamato	318	1	318	.25
Boca Ratone	325	851	276,575	212.83
Deerfield	327	4	1,308	.99
Colohatchee	338	78	26,364	21.06
Fort Lauderdale	341	775	264,275	207.64
Dania	345	11,770	4,060,650	2,244.99
Hallandale	351	3,466	1,216,566	848.84
Ojus	354	26	9,204	7.30
Fulford	355	5,657	2,008,235	1,697.21
Arch Creek	357	3,319	1,184,883	857.46
Biscayne	359	419	150,421	117.41
Little River	361	7,460	2,693,060	2,238.06
Lemon City	362	10,929	3,956,298	2,802.15
Buena Vista	363	2,794	1,014,222	745.72
Miami	366	90,515	33,128,490	23,970.60
Cocoanut Grove	371	42,217	15,662,507	9,775.60
Larkin	374	434	162,316	111.96
Kendal	377	2,247	847,119	588.18
Perrine	382	2,993	1,143,326	808.12
Goulds	386	1,101	424,986	319.91
Black Point	387	1,307	505,809	359.71
Princeton	388	6	2,328	1.99
Naranja	389	5,814	2,261,646	1,182.25
Modello	391	137	53,567	38.28
Homestead	394	7,151	2,817,494	1,651.60
Jewfish	415	77	31,955	15.95
Rock Harbor	424	5	2,120	2.16
Quarry	438	11	4,818	2.46
Central Supply	444	45	19,980	8.23
			165,005,286	139,660.14

165,005,286 crates 1 mile, at 80 pounds per crate=13,200,422,880 pound-miles, or 6,600,211 ton-miles.

Total revenue at new rates $139,660.14
Revenue per ton per mile $0.02116

EXHIBITS 14 AND 15 COMBINED.

	Ton-miles.	Revenue.
Exhibit 14 (vegetables)	17,285,859	$380,692.22
Exhibit 15 (fruits)	6,600,211	139,660.14
Total	23,886,070	520,352.36

Revenue per ton per mile, at new rates, on shipments of vegetables and citrus fruits, for the fiscal year ending June 30, 1911, $0.02178.

Burnside Exhibit No. 6.

(Testimony of Mr. Burnside, p. 743, record.)

Statement of freight earnings for year ended June 30, 1911, prorated on a two-month average basis, showing contributed and earned revenue, by stations, Jacksonville, Fla., to Miami, Fla.; Miami, Fla., to Homestead, Fla.; Homestead, Fla., to Knights Key, Fla.

Total freight revenue for year ended June 30, 1911		$2,150,048.31
Less revenue on company freight		[1] 98,514.26
Total commercial freight revenue		2,051,534.05
Amount of revenue *contributed* on basis of—		
Two months average from stations, Jacksonville to Miami	87.41 per cent.	1,793,245.91
Two months average from stations, Miami to Homestead	11.87 per cent.	243,517.09
Two months average from stations, Homestead to Knights Key	.72 per cent.	14,771.05
Total	100.00 per cent.	2,051,534.05
Amount of revenue *earned* on basis of —		
Two months average by stations, Jacksonville to Miami	97.70 per cent.	2,004,348.77
Two months average by stations, Miami to Homestead	1.89 per cent.	38,773.99
Two months average by stations, Homestead to Knights Key	.41 per cent.	8,411.29
Total	100.00 per cent.	2,051,534.05

I. C. C. Exhibit.

(Introduced as exhibit at page 756 of the record.)

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY,
Washington.

I, John H. Marble, secretary of the Interstate Commerce Commission do hereby certify that the paper hereto attached contains true and correct statements compiled from the annual reports of the Florida East Coast Railway Company rendered to the Interstate Commerce Commission for the fiscal years ending June 30th, 1902 to 1911, inclusive, relating to application of gross earnings from operation.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 27th day of March, A. D. 1912.

[SEAL.]

JOHN H. MARBLE,
Secretary of the Interstate Commerce Commission.

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[1] In red.

STATEMENT A.

FLORIDA EAST COAST RY. CO.

Application of gross earnings from operation.

Fiscal years ending June 30—	Operating revenue.	Other income.	Total receipts.	Operating expenses.	Outside operations.	Taxes.	Accrued interest on funded debt.	Other interest.	Other deductions.	Hire of equipment.	Total charges versus receipts.	Surplus.	Deficit.
1902	$1,936,947.84	.....	$1,936,947.84	$1,378,668.64	.....	$63,550.63	$289,300.00	$31,113.03	$111,484.04	$24,623.00	$1,898,739.34	$38,208.50	.....
1903	2,018,207.16	$2,267.06	2,020,474.22	1,335,515.10	.....	71,122.25	500,851.65	22,925.53	.....	16,077.68	1,946,492.21	73,982.01	.....
1904	2,322,572.88	5,473.16	2,328,046.04	1,481,068.51	.....	69,647.40	662,950.00	6,250.00	.....	20,759.74	2,240,675.65	87,370.39	.....
1905	2,328,863.67	11,325.72	2,340,189.39	1,592,170.83	.....	74,405.33	662,950.00	6,250.00	.....	16,351.70	2,352,127.86	.....	$11,938.47
1906	2,471,152.14	6,847.55	2,477,999.69	1,744,089.26	.....	113,042.16	662,950.00	67,348.28	4,617.26	23,557.30	2,615,604.26	.....	137,604.57
1907	2,950,282.66	3,440.89	2,959,723.55	2,207,207.84	.....	112,582.90	662,950.00	156,454.96	21,589.51	44,589.93	3,205,375.14	.....	245,651.59
1908	3,008,346.43	3,889.19	3,012,235.62	2,375,545.59	.....	131,592.78	662,950.00	214,812.15	16,255.15	11,539.02	3,412,694.69	.....	400,459.07
1909	3,373,554.27	1,905.53	3,375,459.80	2,163,216.45	.....	138,533.37	695,357.85	152,158.36	4,683.78	27,147.12	3,181,096.93	194,362.87	.....
1910	3,687,434.30	8,591.45	3,696,025.75	2,205,812.87	.....	164,775.41	1,150,000.00	6,250.08	5,358.98	49,903.87	3,582,101.21	113,924.54	.....
1911	4,183,384.80	21,507.69	4,204,892.49	2,603,710.19	$2,107.00	173,641.13	1,250,000.00	.....	10,823.52	97,480.82	4,137,762.66	67,129.83	.....
Total	28,286,746.15	65,248.24	28,351,994.39	19,087,005.28	2,107.00	1,112,893.36	7,200,259.50	663,562.39	174,812.24	332,030.18	28,572,669.95	.....	220,675.56

In the Commerce Court of the United States.

TERM 1911.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation, petitioner, *vs.* UNITED STATES, RESPONDENT.	Petition for injunction, etc.

TESTIMONY OF J. C. CHASE.

My name is J. C. Chase. I am a member of the firm of Chase & Company, engaged in the commission business at Jacksonville, Florida. Our principal business is the packing, forwarding, and marketing of citrus fruits and vegetables from the State of Florida. Practically all of our shipments go to points outside the State of Florida. I have been engaged in that business for more than 10 years and am familiar with the conditions surrounding the growing and marketing of such fruits and vegetables.

Records on file in the office of Chase & Co. show that the total volume of citrus fruits from the Miami territory, i. e., the territory lying between Dania on the north and Homestead on the south during the last three seasons were as follows:

Season of—	Boxes.
1909–1910	176,000
1910–1911	270,000
1911–1912	150,000

Practically all of these shipments went from the point of origin to Jacksonville by the Florida East Coast Railway.

This same territory produces by far the larger part of all the vegetables shipped from the east coast of Florida.

Dania is 345 miles from Jacksonville; Miami is 366 miles from Jacksonville; Homestead is 394 miles from Jacksonville.

The growers of such fruits and vegetables within the territory named are subject to several disadvantages as compared with growers of other parts of the State. Fort Myers, on the Atlantic Coast Line

Railroad, is 311 miles from Jacksonville; Sarasota, on the Seaboard Air Line Railway, is 250 miles from Jacksonville; and these points are the farthest removed from Jacksonville of all the shipping points for fruits and vegetables on those two lines. Therefore, if the same mileage rate were applied on the Florida East Coast Railway that is now being applied on the other two lines, the growers in the Miami territory on the Florida East Coast road would be at the disadvantage of greater mileage. The fact that the Atlantic Coast Line and the Seaboard Air Line are now applying the mileage rate which the Florida East Coast Railway has declined to put in effect and is contesting in this case of course subjects the growers of that territory to a still further disadvantage.

Another very serious element of disadvantage which is now confronting the growers of the east coast is the prospect of a more active competition from Cuban fruits and vegetables. Cuban fruits and vegetables compete more generally than like products grown elsewhere in this country. The lack of proper transportation facilities up to the present time has been a handicap to the Cuban products, but if Cuba is placed on a parity with Florida and given transportation facilities equal to or better than those given to Florida products, it would soon have disastrous effect on the Florida fruit and vegetable industries. The installation of a car ferry service between Havana and Key West, by which cars of Cuban fruits and vegetables loaded at points of production could be transported from the point of production and moved into the markets of this country, would result in landing the Cuban products in the markets of the United States in a much better condition than if they moved by steamer to New York, Mobile, or New Orleans. These steamer and rail trips have heretofore impaired the keeping qualities of the Cuban products and rendered them unpopular, but with this handicap removed it will enable the Cuban products to be landed fresh to all the markets in the country, and since Cuba, owing to its more favored location, can not only produce earlier than Florida but can continue shipments through just as long a period as from the various producing sections in Florida, it follows that the Cuban growers and shippers will have a very material advantage over the Florida growers and shippers. This would tend to greatly hurt the industry in Florida, and with the rates and minimums now in effect on Cuban products the result would be disastrous to the Florida growers. The reduction of rates sought by the Florida growers in this case will, of course, tend to protect the Florida producers.

The Florida growers on the line of the Florida East Coast Railway are, of course, subjected to the ordinary hazards of the business, as is the case with other growers. For example, during the present year while there has been a large acreage planted the weather conditions have been unfavorable, many growers have been compelled to

replant three or four times, and the crop will be exceedingly short for the present season. While for the season of 1910–11 the industry was greatly damaged by a congestion of traffic on the Florida East Coast Railway during the heaviest shipping season, the effect of which was to discourage the growers and in many cases to cripple them financially.

Jacksonville is the main concentration point for Florida fruit and vegetable products, and is the only base point for Florida perishable products originating on the Florida East Coast Railway, the Seaboard Air Line, and for that portion of the Atlantic Coast Line and its branches east and north of Kissimmee. The service of the carriers in Florida is essentially a gathering service. Florida products going to northern markets can leave the concentration points on the same footing, regardless of whether the point of origin is on the Florida East Coast Railway, Seaboard Air Line Railway, or that portion of the Atlantic Coast Line Railroad north and east of Kissimmee, regardless of the distance of point of origin from the concentration point.

The Atlantic Coast Line system, in its handling of northbound Florida perishables, uses two points of concentration, i. e., Jacksonville and High Springs. All traffic originating on the Charlotte Harbor division and the main trunk line in the Lakeland territory and north and west of Lakeland is concentrated at High Springs, and does not pass through Jacksonville.

The fruit and vegetable trains on the three lines mentioned are made up mainly as follows: On the Atlantic Coast Line Railroad at Lakeland and Sanford; on the Seaboard Air Line Railway at Wildwood, Turkey Creek, and Waldo; on the Florida East Coast Railway at Miami, Fort Pierce, and New Smyrna.

The estimated comparative volume of business in the handling of citrus fruits and vegetables by the three lines mentioned is indicated by records in the office of Chase & Company, which show that during the season of 1910–11 the fruit and vegetable shipments from these three roads were as follows:

	Miscellaneous, crates.	Pineapples, crates.	Citrus fruits, boxes.	Total.
Atlantic Coast Line	1,500,000	.....	2,901,936	4,401,936
Seaboard Air Line	1,391,335	.....	780,387	2,171,722
Florida East Coast Railway	1,890,000	600,000	669,584	3,159,584

For purposes of comparison I have investigated and find that the distance from Havana, Cuba, to New York City is approximately 1,600 miles, and, according to memoranda furnished to the Interstate Commerce Commission by the ocean transportation companies, the freight rates on raw sugar shipped by steamer from Havana to New

York have ranged during the past five years from 8 cents per 100 pounds to 15 cents per 100 pounds. Assuming an average of 12 cents per 100 pounds during that period, the rate per ton between the two points named would be $2.40.

J. C. CHASE.

STIPULATION.

It is hereby agreed between counsel that J. C. Chase, if called as a witness in this cause, would testify in accordance with the foregoing statement to which his signature is attached, and that subject to all lawful objections and exceptions for irrelevancy or incompetency the foregoing statement may be filed and used in evidence in this cause with the same effect as if the said J. C. Chase had appeared in open court and had testified under oath in the language set out in the said statement.

This 4th day of May, 1912.

F. M. HUDSON,
Attorney for Railroad Commissioners of Florida, Intervenors.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

We agree with the attorney for the railroad commissioners of Florida, intervenors, that J. C. Chase if called as a witness in this case would testify in accordance with the statement to which his signature is attached, but we object to his testimony on the following grounds:

1. Because the testimony offered is too late for the purposes of this case and should have been given before the Interstate Commerce Commission and the petitioners afforded an opportunity of rebutting it.

2. Because the comparisons between the rates from Dania, Miami, and Homestead on the Florida East Coast Railway, and Fort Myers on the Atlantic Coast Line, and Sarasota on the Seaboard Air Line are unjust and misleading for the following reasons:

(1) Because most of the fruit and vegetables shipped from Sarasota are produced on the keys and islands and have to be transported to Sarasota for shipment;

(2) Because a large amount of the fruit and vegetables shipped from Fort Myers have to be brought up or down the Caloosahatchee River for shipment there;

(3) Because it is not shown that the Seaboard Air Line and the Atlantic Coast Line furnish the same facilities to the growers that it is shown the Florida East Coast Railway furnishes to the growers on its line of road;

(4) Because the Florida East Coast Railway furnishes facilities to the growers on its line of road that saves them largely more than the

difference between the rates on the Florida East Coast Railway and the rates recently put in effect by the Atlantic Coast Line and the Seaboard Air Line Railway;

(5) Because the testimony does not show where the great bulk of the vegetables are produced which are shipped on the Atlantic Coast Line and the Seaboard Air Line Railway;

(6) Because the great bulk of the vegetables produced on the line of the Florida East Coast Railway come into market before the great bulk of the vegetables produced on the lines of the Atlantic Coast Line and the Seaboard Air Line Railway and command the highest prices;

(7) Because the conditions existing on the Florida East Coast Railway are entirely different from those existing on the Atlantic Coast Line and the Seaboard Air Line Railway;

(8) Because, as is shown from the evidence, the great mass of vegetables are produced south of Dania;

(9) Because there are very few vegetables produced on the line of the Florida East Coast Railway as far north as 250 miles south of Jacksonville;

(10) Because the facilities furnished by the Florida East Coast Railway to growers of fruits and vegetables on its line of road enables that road to deliver the freight at the base point at Jacksonville in less time than either of the other roads.

3. Because the statement of Chase as to Cuban fruits and vegetables is pure speculation and not evidence.

4. Because the evidence before the Interstate Commerce Commission, save and except that of Chase, shows that there is practically no competition whatever by Cuba with Florida in the marketing of vegetables.

5. Because freight rates can not be based on speculations as to future competition with Cuba.

6. Because speculations as to the result of installing a car-ferry service between Havana and Key West can not be made the basis for rates on the Florida East Coast Railway.

7. Because the testimony before the Interstate Commerce Commission shows that the Cuban fruits and vegetables are inferior to those of Florida.

8. Because the Interstate Commerce Commission is not authorized to impose rates on a Florida railroad for the protection of the Florida grower against the Cuban grower, that being a matter solely for the consideration of Congress.

9. Because the statements of the witness as to the alleged damage by congestion of traffic during the season of 1910 are mere opinions without a single fact to sustain them.

10. Because the testimony shows that at the time of the brief congestion of traffic on the line of the Florida East Coast Railway tomatoes were selling in the Northern markets for less than the cost of picking, packing, and freight, and that the congestion enables the growers to dispose of the balance of their crop at good prices.

11. Because the gathering service of the Florida East Coast Railway Company by means of special pick-up trains is superior to that of the Atlantic Coast Line and the Seaboard Air Line, and imposes an additional expense on the Florida East Coast Railway Company.

12. Because the comparison as to water rates from Havana, Cuba, to New York City on sugar is utterly inapplicable to rates on fruits and vegetables.

ALEX ST. CLAIR ABRAMS,
FREDERICK C. BRYAN,
Attorneys for Petitioner.

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No. 22.		do.	(Exhibit 14 of the Petition)	198
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APPRAISAL OF RIGHT OF WAY.

EXHIBIT 1.

Viewer's Report of Appraisement of Right of Way of Florida East Coast Railway Company, Brevard County, North from Pineda to North Line of County.

Main Line from County Line to Titusville.

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
Township 20 S. R. 35 East.			
McIntosh Grant Sec. 43, Marsh	Unknown		$25.00
Lot 1, Sec. 6, Marsh	Sheffield Land Co.	1.81	15.00
Lot 2 Sec. 6, Marsh	G. B. Eggleston		25.00
Lot 3 Sec. 6, Marsh	Sheffield Land Co.	2.32	25.00
Lot 4 Sec. 6, Marsh	G. B. Eggleston		25.00
Lot 1 Sec. 7, Marsh	Mosier, P. C.	7.75	100.00
Lots 3 & 4 Sec. 8, Cabbage Marsh	V. H. Lanning	4.68	100.00
Lot 1 Sec. 17, Cabbage Marsh	Stewart, I. A.	1.28	25.00
Segui Grant N. of Acosta Grant, Cabbage Marsh	William Dallam	7.27	100.00
N. ¼ of Acosta Grant, Cabbage Marsh	E. W. Bliss	13.09	175.00
S. ¾ of Acosta Grant, Cabbage Marsh	E. S. Quimby	39.27	400.00
S. part of Segui Grant, Cabbage Marsh	William Dallam	4.83	75.00
Lot 1 Sec. 32, Cabbage Marsh	S. Bebe	2.87	50.00
Lot 2 Sec. 32, Cabbage Marsh	W. T. Caven	3.32	50.00
Lot 6 Sec. 32, Cabbage Marsh	C. L. Moore	4.50	100.00
Lot 1 Sec. 33, Cabbage Marsh	C. L. Moore	2.12	50.00
			$1,340.00
Township 21 S. R. 35 East.			
Lots 1 & 2 Sec. 4, Cabbage Marsh	F. A. Baldwin	6.16	100.00
Lot 1 Sec. 9, Cabbage Marsh	J. D. Carey	1.54	50.00
Lot 2 Sec. 9, Cabbage Marsh	J. M. Wilcox		50.00
Lots 3 and 4 Sec. 9, Cabbage Marsh	M. T. Jones	3.65	50.00
			$1,590.00

2

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
			$1,590.00
Lot 9 Hawthorne's Subd. Sec. 16, Marsh & Hammock	B. M. Hawthorne	3.39	75.00
Lot 8 Hawthorne's Sub. Sec. 16, Marsh & Hammock	L. Bloodworth	2.39	75.00
Lot 7 Hawthorne's Subd. Sec. 16, Marsh & Hammock	M. E. Hammond	1.59	50.00
N. ½ Lot 16 Hawthorne's Subd. Sec. 16, Cabbage Hammock	W. W. Ballard	0.80	80.00
S. ½ Lot 16 Hawthorne's Subd. Sec. 16, Marsh	B. L. Ainsley	0.80	15.00
Lot 1 Hawthorne's Subd. Sec. 16, Marsh	S. P. Hawthorne	0.80	15.00
Lot 2 Hawthorne's Subd. Sec. 16, Marsh	F. J. Hammond	0.80	15.00
Lot 3 Hawthorne's Subd. Sec. 16, Marsh	F. N. Paulling	0.80	15.00
Lot 4 Hawthorne's Subd. Sec. 16, Cabbage Hammock	F. J. Hammond	1.60	100.00
Lot 6, Hawthorne's Subd. Sec. 16, Cabbage Hammock	A. S. Johnson	0.98	75.00
N. ½ Lot 1 Sec. 21, Cabbage Hammock	M. F. Dwyer	1.59	100.00
S. ½ Lot 1 Sec. 21, Hammock	S. I. Magruder	1.59	100.00
Lot 2 Sec. 21, Cabbage Hammock	M. T. Jones	1.59	100.00
Lot 3 Sec. 21, Cabbage Hammock	B. F. Whittington	1.59	100.00
Lots 1 & N. ½ Lot 2 Sec. 21, Cabbage Hammock	T. D. Feaster	4.53	180.00
N. ½ of S. ½ of Lot 2 Sec. 21, Cabbage Hammock	Amos Gainsley	0.76	40.00
S. ½ of S. ½ Lot 2 Sec. 28, Cabbage Hammock	M. E. Norwood	0.38	40.00
N. ½ Lot 3 Sec. 28, Cabbage Hammock	A. M. Clayton	1.51	60.00
N. ½ of S. ½ Lot 3 Sec. 28, Cabbage Hammock	F. E. C. R'y Co.	0.76	50.00
S. ¼ Lot 3 Sec. 28 & N. 3 chs. Lot 4, Cabbage Hammock	Indian River S. Bk.	0.48	40.00
S. 5 chs. of N. 8 chs. Lot 4 Sec. 28, Cabbage Hammock	M. L. Taylor	0.38	40.00
S. 12 chs. Lot 4 Sec. 28, Rich garden land	F. T. Budge	0.91	200.00
			$3,155.00

3

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
			$3,155.00
N. 8 chs. lot 1 Sec. 33, Hammock	P. Nelson	0.65	75.00
S. 5 chs. of N. 13 chs. Lot 1 Sec. 33, Hammock	R. E. Allen	0.85	100.00
N. 10 acres of S. 20 acres Lot 1 Sec. 33, Hammock	Brown & Tuttle	0.29	50.00
N. 5 acres of S. 10 acres Lot 1 Sec. 33, Hammock	George M. Robbins	0.30	50.00
S. 5 acres of Lot 1 Sec. 33, Hammock	M. E. Robbins	0.30	50.00
Lot 1 Subd. Lot 2 Sec. 33, Low cabbage hammock	J. E. Bennett	0.82	75.00
Lot 8 Subd. Lot 2 Sec. 33, Garden land	B. Young	0.53	60.00
Lot 1 Sec. 34, Hammock	B. Young	2.50	150.00
			$3,765.00

The Main Line Runs Through Titusville on De Soto Street in Front of the Following Properties.

The N. 5 chs. of S. 20 chs. Lot 2 Sec. 34, Low garden land	B. Young	25.00
A lot 75′ x 190½′ Sec. 34, Residence lot	M. E. Norwood	100.00
Lot 52′ x 190½′ Lot 2 Sec. 34	F. E. C. Ry. Co.	100.00
Coleman's Addition to Titusville		
Lots 11-10, 9-8 & 3 vacant Block D	T. C. Drawdy	250.00
Lots 13-11-9-7-5 Block C vacant	J. R. Walker	200.00
Lot 3 Block C, vacant	E. Dryer	50.00
Titus' Addition to Titusville		
Lots 1-4 & 5 Block 1, garden land	E. M. S. DeGrauw	150.00
S. E. ¼ of Block 1, garden land	T. W. Lund	100.00
Lots 1-4-5 Block 4 set out in garden	M. E. Norwood	150.00
Lots 8 & 9 Block 4 Residence lot	W. R. Wolf	150.00
Lots 1-4-5-8-9, vacant	J. H. Vondy	200.00
		$5,240.00

4

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
			$5,240.00
Lot 1 Block 8 vacant	A. Cleveland		50.00
Lot 4 Block 8 vacant	L. B. Bigelow		50.00
Lot 5 Block 8 vacant	F. Turknett		50.00
Lots 8 & 9 Block 8 vacant	C. C. Bravo		100.00
Township 22 S. R. 35 East			
N. 200 ft. Lot 2 Sec. 3 vacant	J. Einig		150.00
S. 460 ft. of N. ¼ Lot 2 Sec. 3 Lumber yard	Bond & Conrad		400.00
			$6,040.00
Robbins & Graham's Addition to Titusville.			
Lots M-N-A-C-1-2-E-G-I & K used for R. R. purposes	F. E. C. R'y Co.		500.00
Le Baron's Map of Titusville.			
W. ½ Block L, residence	C. D. Flood		150.00
Lot 1 W. subd. Block 3 residence lot	S. G. Vanlandingham		50.00
Lots 6 & 8 W. subd. Block 3 pump House & Tank	F. E. C. R'y Co.		100.00
N. ½ Lot 1 W. ½ Block 4 residence	Mrs. J. T. Price		75.00
S. ½ Lot 1 W. subd. Block 4 out houses & Stables	E. M. S. DeGrauw		50.00
Lots 6 & 7 W. subd. Block 4 residence	R. L. Baldwin		400.00
Lots 1 & 6 Block 9, Stables	E. L. Brady		150.00
Lots 8 & 10 Block 9, vacant	F. E. C. R'y Co.		300.00
All Block 15 Court House Jail & Sheriff's House	Brevard County		300.00
Lots 1-5 & 7 Block 16 vacant	F. E. C. R'y Co.		225.00
Lots 9 Block 16, Lodge Building	Colored Odd Fellows		50.00
Lots 1-2-4-6-7-9 Block 21 Section house & dwellings	F. E. C. R'y Co.		250.00
Lots 2-4-6-8 Block 30 vacant	F. E. C. R'y Co.		250.00
			$8,890.00

5

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
			$8,890.00
Lots 3-5-7-9-12 Block 19 vacant	F. E. C. R'y Co.		250.00
Joynerville an Addition to Titusville			
Lot 3 Gray's subd. Lot 38 residence	Bettie Edmondson		100.00
Lot 4 Gray's subd. Lot 38 vacant	S. F. Gray		50.00
Lots 1 & 7 Gray's subd. Lot 36, residence	E. Ellenwood		100.00
Lot 43 residence	A. Gibson		200.00
Lots 44-45-46 residence	A. Ellenwood		100.00
Rerdell's Addition to Titusville			
Lot 51 Residence	S. F. Gray		75.00
Lot 49 Residence	George Deming		50.00
Lots 48-47 Residence	N. H. Wilbur		100.00
Lots 46-45-44 set out in garden	Bettie Edmondson		150.00
Lot 52 Church Lot	A. M. E. Church		150.00
Lot 54 Residence	J. F. Brown		75.00
Lot 55 Residence	J. Jameson		75.00
Lot 56 Dilapidated house	C. Allen		50.00
Lot 66 Vacant	G. Losley		25.00
Main Line from Titusville to Pineda.			
W. ½ Lot 21 & W. ½ Lot 22 of Wilbur's subd. set in garden	George M. Robbins	3.42	150.00
Lot 20 Wilbur's Subd. set in garden	Graham & Chillingworth	1.75	50.00
All Sec. 3 S. of Grant line & W. of R. R. Low flat woods	James Pritchard	4.96	75.00
N. ¼ Fractional Sec. 10 W. of R. R. Palmetto flats	S. G. Gleason	6.20	100.00
S. ½ Fractional Sec. 10 W. of R. R. Palmetto Flats	E. M. Potter et al.	6.22	100.00
N. E. ¼ of N. W. ¼ Sec. 15 Fair timber & Palmetto	M. H. Pritchard	3.10	50.00
S. W. ¼ of N. E. ¼ & N. W. ¼ of S. E. ¼ Fair timber & palmetto	J. C. Cooper	6.20	100.00
S. W. ¼ of S. E. ¼ Sec. 15 Oak Scrub	Emma Reed	3.10	50.00
N. W. ¼ of N. E. ¼ Sec. 22, N. ½ Oak scrub S. ½ palmetto flats	F. H. Boye	3.10	50.00
			$11,165.00

6

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
SW ¼ of NE ¼ & N. ½ of SE ¼ Palmetto flats and Oak scrub	G. C. Street, Tr.	6.20	$100.00
Lot 3 Sec. 22, Oak scrub	Mary H. Pritchard	3.10	50.00
NE ¼ of NE ¼ Sec. 27, & Lots 1 & 2 Sec. 26, N. part oak scrub & swamp. S. part palmetto	J. C. Cooper	12.31	150.00
Lot 3 Sec. 26, Palmetto flats	William Allen	3.40	50.00
Lot 1 Sec. 35 Poor palmetto scrub (N. ½)	G. C. Street, Trustee	3.40	50.00
Lot 1 Sec. 35 (S. ½) Poor palmetto scrub	William Allen	3.33	50.00
N. ½ Lot 2 Sec. 35, Poor palmetto scrub	J. C. Cooper	3.33	50.00
S. ½ Lot 2 Sec. 35, Poor palmetto scrub	William Allen	3.12	50.00
Township 2 S. R. 35 East.			
Lot 1, Sec. 1 Oak Scrub	G. C. Street, Trustee	3.00	50.00
Lot 2, Sec. 1, Poor scrub	J. T. Morel	3.00	50.00
Lot 3 Sec. 1, Poor scrub	W. B. McCardle	3.00	50.00
Lots 4 & 5 Sec. 1, Poor scrub	M. J. Stevens	6.00	100.00
N. 1/3 Lot 6 Sec. 1, Oak scrub	M. S. Williams	1.00	20.00
Middle 1/3 lot 6 Sec. 1 Palmetto flats	C. E. Hamar	1.00	20.00
S. 1/3 Lot 6 Sec. 1, Palmetto flats	D. L. Gaulden	1.00	20.00
All Secs. 12 & 13 Palmetto flats	Indian River Commercial Co.	24.31	300.00
Fractional Sec. 24 inside the Grant. Pine timber, sand pit on south end	F. E. C. R'y Co.	5.13	100.00
All S. ½ of NE ¼ S. of Grant line Marl pond E. of R. R. Pine timber W. of R. R.	Pritchett Bros.	1.21	50.00
N. ½ of SE ¼ Sec. 24, Palmetto scrub	C. Le Visconte	3.17	50.00
S. ½ of SE ¼ Sec. 24, Palmetto scrub	N. J. Argetsinger	3.17	50.00
Triangular piece E. of R. R. in NE ¼ of NE ¼ Sec. 25. Palmetto scrub	N. J. Argetsinger	1.18	25.00
N. 11½ acres of NE ¼ W. of R. R. Old clearing	S. V. Thompson	0.46	25.00
			$1,460.00
			11,165.00
			$12,625.00

7

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
Subdivision of 20 acres in N. E. ¼ of N. E. ¼ Sec. 25.			
N. 5 acres poor pine timber & palmetto scrub	M. C. Sawtelle	0.29	$25.00
S. 5 acres of N. 10 acres Pine timber	J. E. Dixon	0.43	25.00
S. 10 acres, Cut through pine timber	E. E. Swinson	1.14	50.00
N. ½ of S. E. ¼ Sec. 25 Cut, through pine timber	E. Ames	1.54	50.00
S. ½ of SE ¼ of NE¼ Sec. 25 Cut through good ridge on S. Pine timber on N. end	J. C. Vaile	1.54	50.00
N. E. ¼ of S. E. ¼ Sec. 25 Palmetto flats	A. P. Anthony	3.08	75.00
S. E. ¼ of S. E. ¼ Sec. 25, Palmetto flats	Pritchett Bros.		75.00
N. ½ of N. E. ¼ Sec. 26, palmetto flats	J. Belsinger		75.00
Township 2 S. R. 36 East.			
W. ½ of N. W. ¼ Sec. 31 Palmetto flats	S. V. Thompson	3.67	75.00
NW ¼ of SW ¼ Sec. 31 Palmetto flats on N. end. Cut through palmetto scrub on S. end	G. W. Holmes	3.31	75.00
SW ¼ of S. W. ¼ Palmetto flats	U. S. of America	2.84	75.00
N. 9½ acres of S. 10 acres Sec. 31, Palmetto scrub	L. R. Ord	0.38	25.00
S. ½ acre of SE ¼ of SW¼ Sec. 31, Palmetto scrub	H. S. Black	0.08	15.00
Township 24 S. R. 36 East.			
N. 15 acres of NE ¼ of NW ¼ Sec. 6, Palmetto scrub	H. S. Black	1.23	30.00
S. 21½ acres of N. E. ¼ of NW ¼ Sec. 6, Palmetto scrub & old grove	A. E. Fairbanks	1.58	75.00
37 acres in S. E. ¼ of NW ¼ Sec. 6, Palmetto scrub	H. S. Black	3.02	75.00
S. 1 acre of S. E. of N. W. ¼ & NE ¼ of SW ¼ Palmetto scrub	C. Alexander	1.21	40.00
N. ½ of N. W. ¼ of S. E. ¼ Sec. 6 Palmetto scrub	C. C. Mast	0.10	15.00
			$925.00
			12,625.00
			$13,550.00

8

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
N. 6.32 acres of S. ½ of N. W. ¼ of S. E. ¼ Sec. 6, Palmetto scrub	W. H. Sharpe	0.54	$25.00
N. 7.36 acres of S. 13.68 acres of N. W. ¼ of S. E. ¼ Sec. 6, Palmetto scrub	J. W. Ballantine	0.64	30.00
S. 6.32 acres of N. W. ¼ of S. E. ¼ & N. 3.68 acres of S. W. ¼ of SE ¼ Sec. 6, Palmetto scrub	J. H. Robinson	0.87	50.00
N. 6.32 acres of S. 36.32 acres of S. W. ¼ of S. E. ¼ Sec. 6, Palmetto scrub	J. W. Ballantine	0.54	25.00
S. 30 acres of SW ¼ of SE ¼ Sec. 6, Palmetto scrub	F. A. Sharpe	2.57	75.00
N. W. ¼ of N. E. ¼ Sec. 7, Good oak scrub	J. M. Sanders	3.32	150.00
SW ¼ of NE ¼ Sec. 7, Good oak scrub	T. A. Robinson	0.91	50.00
S. ¼ of N. ½ of SE ¼ of NE ¼ Sec. 7, Good oak scrub	C. A. Hents (Est.)	0.73	50.00
S. ½ of S. E. ¼ of NE ¼ Sec. 7, Good oak scrub	W. B. Hentz	1.66	100.00
N. ½ of NE ¼ of SE ¼ Sec. 7, Good oak scrub	M. C. Battenfield	0.83	50.00
S. ½ of N. ½ of NE ¼ of SE ¼, Sec. 7, Oak scrub	C. R. Tarter	0.83	50.00
S. ½ of N. E. ¼ of S. E. ¼ Sec. 7, W. of R. R. Saw grass pond E. of R. R. Poor palmetto scrub	E. Becker	1.66	50.00
SE ¼ of SE ¼ Sec. 7, W. of R. R. Saw grass pond, E. of R. R. Poor palmetto scrub	T. A. Robinson	3.32	75.00
N. 6 chs. of N. W. ¼ of N. W. ¼ Sec. 17, Spruce pine	J. A. Bentel	0.91	50.00
S. 14 chs. of NW ¼ of NW ¼ & SW ¼ of NW ¼ Sec. 17, Poor palmetto scrub, spruce pine & some marsh W. of R. R.	H. Banks	6.00	150.00
NW ¼ of SW ¼ Sec. 17, oak scrub	E. A. Brown	0.53	25.00
N. part of NE. ¼ of SW ¼ Sec. 17, Spruce pine	H. Banks	0.68	25.00
S. part of N. E. ¼ of SW ¼ & N. ½ of S. E. ¼ of SW ¼ Sec. 17, Oak & palmetto scrub	A. S. Dixon	4.15	100.00
			$1,130.00
			13,550.00
			$14,680.00

9 Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
N. ½ of S. ½ of S. E. ¼ of S. W. ¼ Sec. 17, Oak scrub	E. Raulerson	0.68	$40.00
S. ½ of S. E. ¼ of S. W. ¼ Sec. 17, Oak scrub	John Henry	0.68	40.00
N. E. ¼ of N. W. ¼ Sec. 20, Oak scrub	A. A. Taylor	0.31	25.00
N. W. ¼ of N. E. ¼ Sec. 20, Oak scrub	A. W. Cockrell	3.35	150.00
N. ½ of S. W. ¼ of N. E. ¼ Sec. 20, Oak scrub	Brevard County State Bank	1.83	75.00
17½ acres in S. W. ¼ of N. E. ¼ Sec. 20, Oak scrub	R. L. Dixon	0.41	25.00
14 acres partly in S. W. ¼ of N. E. ¼ & partly in N. W. ¼ of S. E. ¼ Sec. 20, Oak scrub	T. Hutson	0.23	15.00
22 acres in Lot 1 & N. E. ¼ of S. E. ¼ Sec. 20, Oak scrub	R. L. Dixon	1.98	75.00
4 acres in N. E. ¼ of S. E. ¼ W. of R. R. Sec. 20, Oak scrub	W. F. Dixon	0.20	15.00
30 acres S. of R. L. Dixon & W. F. Dixon, being Lot 2 of Dixon's subd. Sec. 20, Oak scrub	A. Z. Dixon	1.59	75.00
Lot 3 Dixon's subd. Sec. 20, Oak scrub	L. J. Fish	1.67	75.00
Lot 4 Dixon's subd. Sec. 20, Oak scrub	A. S. Dixon	1.67	75.00
Lot 6, Dixon's subd. Sec. 20, Deep fill on S. end, balance oak scrub	R. L. Dixon	1.23	125.00
S. 6 acres of Sec. 21, Deep cut through good hickory scrub, yellow sand	Fairview Land Co.	0.30	50.00
N. 30 acres Lot 1, Sec. 28, Cut through good hickory scrub, yellow sand	Fairview Land Co.	2.47	200.00
S. 4 chs. Lot 1 Sec. 28, Hammock	H. S. Volmer	0.61	75.00
N. 8 chs. of Lot 2 Sec. 28, Fair land on edge of hammock	S. H. Volmer	1.21	100.00
S. 4 chs. of N. 12 chs. Lot 2 Sec. 28. Partly fill through pond, and cut	J. Capehart	0.61	75.00
			$1,310.00
			14,680.00
			$15,990.00

10

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
N. 5 chs. of S. 8 chs. Lot 2 Sec. 28, Fill through pond	J. G. Powell	0.80	$25.00
S. 3 chs. of Lot 2 Sec. 28 & N 2 chs. of N. W. ¼ of S. W. ¼ Heavy fill through pond	E. C. McGinnis	0.80	25.00
S 4 chs. of N. 6 chs. of N. W. ¼ of S. W. ¼ E. of R. R. Sec. 28, Heavy fill through pond	J. O. Scofield	0.35	15.00
N. 4½ chs. of S. 14 chs. N. W. ¼ of S. W. ¼ Sec. 28, Heavy fill through pond	A. J. Mathers	0.39	15.00
N. 3 chs. of S. 9½ chs. E. of R. R. N. W. ¼ of S. W. ¼ Sec. 28, Heavy fill through pond	R. La Roche	0.28	15.00
N. 9½ chs. of S. 18 chs. of N. W. ¼ of S. W. ¼ W. of R. R. Heavy cut & fill through scrub	J. W. & C. R. Setz	1.02	100.00
N. 3½ acres of S. 6½ acres of N. W. ¼ of S. W. ¼ Sec. 28, Scrub on W. side, marsh on E. side	H. S. Smith	0.68	25.00
S. 3 chs. of N. W. ¼ of S. W. ¼ & N. 1 ch. of S. W. ¼ of S. W. ¼ Sec. 28, Scrub & Marsh	S. S. Casey	0.65	25.00
S. 5 acres of N. 6 acres of S. W. ¼ of S. W. ¼ Sec. 28, Fair scrub	I. C Sloan	0.91	75.00
S. 1 ch. of N. 7 chs. of S. W. ¼ of S. W. ¼ Sec. 28, Poor land, high in front	Y. Lundy	0.21	25.00
S. 2½ chs. of N. 8½ chs. of Lot 5 Sec. 28, High scrub	W. M. Weinberg	0.22	25.00
S. 2½ chs. of N. 11 chs. of Lot 5, Sec. 28, High scrub	A. S. Dixon & E. Spearman	0.46	25.00
N. 2 chs. of S. 10 chs. Lot 5 Sec. 28, Cut through scrub & spruce pine	N. M. Fish	0.33	25.00
N. 24 ft. of S. 492 ft. of Lot 5 Sec. 28, Cut through scrub and spruce pine	J. F. Mitchell	0.08	15.00
N. 24 ft. of S. 468 ft. of Lot 5 Sec. 28, Cut through scrub and spruce pine	R. C. Snyder	0.08	15.00
N. 48 ft. of S. 444 ft. of Lot 5 Sec. 28, Cut through scrub and spruce pine	E. Kellum	0.15	25.00
			$475.00
			15,990.00
			$16,465.00

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Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
N. 192 ft. of S. 396 ft. Lot 5 Sec. 28, Cut through scrub & spruce pine	J. F. Mitchell	0.60	$25.00
N. 96 ft. of S. 204 ft. Lot 5 Sec. 28, Cut through scrub & spruce pine	G. B. Bishop	0.30	25.00
S. 108 ft. of Lot 5 Sec. 28, Cut through scrub & spruce pine	Holmes & Taylor	0.35	25.00
	Town of Cocoa		
	Dixon's Addition		
Lots 3-4 & 14, Vacant	A. S. Dixon		150.00
Lot 18, Vacant	F. E. C. R'y Co.		50.00
Lot 32 E. of R. R. Vacant	K. L. Coward		50.00
Lot 32 W. of R. R. Vacant	E. Stiling		50.00
Lot 33, Vacant	P. C. Cantine		50.00
A lot 200 ft. wide N. of Depot lot. scrub, vacant	Fred Fisher	0.61	150.00
Lot 150 ft. wide W. of Depot, scrub, vacant	M. J. Eaton	0.46	100.00
Lot 6 Sanders Addition, vacant	J. M. Sanders		25.00
N. ½ Lot 5, Sanders Add. E. of R. R. Photograph gallery	J. W. Taylor		50.00
S. ½ Lot 5 Sanders Add. E. of R. R. Vacant	W. E. Booth		50.00
Lot 5 Sanders Add. W of R. R. Vacant	S. Childs		50.00
	Indian River City, Cocoa.		
Lot 3, Residence	W. G. Patterson		100.00
Lot 4, Old freight depot	F. E. R'y Co.		50.00
N. ½ Lot 10 W. of R. R. Oil house	S. F. Travis		25.00
S. ½ Lot 10 W. of R. R. Small store	M. J. Moore		50.00
Lot 10 E. of R. R. residence	W. A. Salisbury		200.00
W. 2/3 Lot 2 School House	Brevard County		100.00
E. 1/3 Lot 2 Town Hall	Town of Cocoa		50.00
W. ½ Lot 1 Lumber Yard	Sam Childs		50.00
			$1,400.00
			16,465.00
			$17,865.00

12

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
W. 25 ft. of E. ½ of Lot 1 Old blacksmith shop	E. C. Johnson		$25.00
S. 1/3 of E. ½ Lot 1 Store	Mrs. Grimes		100.00
Lot E. Assessor's plat dwelling house	F. E. C. R'y Co.		200.00
Lot K, Assessor's plat freight house	F. E. C. R'y Co.		100.00
Lot L, Assessor's plat store buildings	S. F. Travis		100.00
E. ½ Lot 12, Grocery Store	E. C. Johnson		100.00
W. ½ Lot 12, Dwelling House	S. F. Travis		100.00
E. ½ Lot 11, Dwelling House	B. Reed		100.00
W. ½ Lot 11, Dwelling House	G. Stevens		100.00
W. ¾ Lot 14 E. of R. R., Dwelling House	M. Williams		250.00
Lot 14, W. of R. R. Dwelling	P. Beasley		250.00
N. ½ Lot 23, Dwelling	F. A. James		200.00
S. ½ Lot 23, Small House	S. McIntosh		150.00
Lot 26 W. of R. R., Dwelling House	W. M. Speed		200.00
Lot 25, Dwelling House	L. T. Daniel		100.00
E. ½ Lot 35. Dwelling House	W. M. Speed		100.00
Lot 36, Dwelling House	J. F. Wooten		100.00
	Singleton's Addition		
Lots 1 & 10, Dwelling on Lot 1	G. Hill		150.00
Lot 10, vacant	K. Eyer		50.00
Lot 2, Vacant	E. C. Johnson		50.00
Lot 3, Vacant	H. A. Curtiss		50.00
Lot 4, Vacant	J. D. Trafford		100.00
Lot 5, Dwelling house			
	Singleton's 2nd Addition		
Lot 1, Dwelling house	J. D. Trafford		100.00
Lot 2, Dwelling house	A. H. Paxton		100.00
			$2,875.00
			17,865.00
			$20,740.00

13 Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
Lot 3. Vacant	A. Wesson		$50.00
Lot 4. Vacant	R. Packard		50.00
Lot 5. Dwelling house	J. R. Garren		100.00
Lots 6-7-8-9-10-11, vacant	G. S. Singleton		200.00
S. ½ of N. W. ¼ of SE ¼ and N. 11½ chs. of S. W. ¼ of S. E. ¼. Poor orange grove.	G. S. Singleton	1.18	125.00
N. 3½ chs. of S. 8½ chs. in S. W. ¼ of S. E. ¼ Sec. 33, Good orange grove	C. J. Coggin	0.26	100.00
S. 5 chs. of S. W. ¼ of S. E. ¼ Sec. 33, Good orange grove	E. J. Hardee	0.38	150.00
S. 8¼ chs. of S. E. ¼ of S. E. ¼ Sec. 33, Good orange grove	G. S. Hardee	0.64	200.00
Township 25 S. R. 36 East.			
N. 4 chs. of N. ½ of N. E. ¼ of Sec. 4, Good orange grove	G. S. Hardee	0.30	150.00
S. 2.20 chs. of N. 6.20 chs. of N. W. ¼ of N. E. ¼ Sec. 4, Good orange grove	A. A. Taylor	0.17	100.00
S. 3.95 chs. of N. 7.95 chs. of N. E.¼ of N. E. ¼ Sec. 4, Good orange grove	O. Currier	0.30	100.00
N. 1.82 chs. of S. 11.48 chs. of N. E. ¼ of N. E. ¼ of Sec. 4, Good orange grove	S. D. Rambo	0.14	50.00
N. 3.58 chs. of S. 9.66 chs. of N. E. ¼ of N. E. ¼ Sec. 4, Good orange grove	W. J. Drill	0.25	100.00
S. 6.08 chs. of N. E. ¼ of N. E. ¼ Sec. 4, Good orange grove	M. A. Hardee	0.45	150.00
N. 4.21 chs. of S. E. ¼ of N. E. ¼ Sec. 4, Good orange grove	L. S. Pettee	0.30	100.00
N. 20 chs. of S. 36 chs. of W. ½ of N. E. ¼ Sec. 4. Good orange grove	J. H. Derby	1.51	400.00
S. 15.80 chs. of S. ½ of N. E. ¼ except S. 3 chs. of S. E. ¼ of N. E. ¼ Sec. 4, N. ¾, Good orange grove on both sides of R. R. S. ¼ Hickory scrub	Gingrass & Canova	1.10	450.00
S. 3 chs. of S. E. ¼ of N. E. ¼ Sec. 4, High hickory scrub	C. Vuille	0.11	25.00
			$2,300.00
			20,740.00
			$23,040.00

14 Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
N. 818 ft. of N. ½ of S. E. ¼ of Sec. 4, Palmetto scrub W. of R. R. Good orange grove E. of R. R. S. 507 ft. of N. E. ¼ of S. E. ¼ & all S. E. ¼ of S. E. ¼ Sec. 4, Old grove on E. side, Scrub & marsh on W. side of R. R.	F. F. Taylor	0.93	$250.00
	P. J. Dwyer, Trustee	4.68	80.00
Spur Into Rockledge			
N. 813 ft. of N. E. ¼ of S. E. ¼ Sec. 4 & N. 813 ft. of Lot 3, Sec. 3, Deep cut through orange grove on W. end Fill through grove on E. end S. 507 ft. of N. E. ¼ of S. E. ¼, Sec. 4, & of Lot 3, Sec. 3, Deep cut through orange grove on W. end Fill through orange grove on E. end.	F. F. Taylor	1.60	2,500.00
	P. J. Dwyer, Trustee	1.60	2,500.00
N. W. ¼ of S. E. ¼ N. of Y. Marsh	F. F. Taylor	0.65	50.00
S. W. ¼ of S. E. ¼ S. of Y. Marsh	Williams & Garvey	0.75	50.00
N. 60 ft. of N. E. ¼ of N. E. ¼ Sec. 9, Oak scrub	M. C. Sullivan	0.22	50.00
S. 117 ft. of N. 177 ft. of N. E. ¼ of N. E. ¼ Sec. 9, Oak scrub	J. C. Dickson	0.42	50.00
N. W. ¼ of N. W. ¼ & W. 16 2/3 chs. of S. W. ¼ of N. W. ¼ Sec. 10, scrub & low prairie	H. S. Williams	4.80	125.00
E. 3 1/3 chs. of S. W. ¼ of N. W. ¼ All of Lot 2 & N. 772 ft. of Lot 3, Sec. 10, Orange grove W. of R. R. on S. part, E. of R. R. poor land. Orange grove E. of R. R. on N. part	J. P. Garvey & Sons	3.75	200.00
N. 208 ft. of S. 548 ft. of Lot 3, Fair scrub	A. D. Baldwin	0.25	25.00
N. 226 ft. of S. 339 ft. of Lot 3, Sec 10, Fair scrub	S. Morris, Trustee	0.56	50.00
S. 113 ft. of Lot 3 & S. E. ¼ of S. W. ¼ Sec. 10, Poor scrub	J. Paxton	2.25	125.00
N. 420 ft. of S. 900 ft. Lot 4 Sec. 10, Poor scrub	H. B. & B. R. Paxton	0.69	50.00
S. 480 ft. of Lot 4, Sec. 10, Palmetto scrub	L. M. Powe	1.08	75.00
Lot A Sec. 15, as shown on plat, High hickory scrub	S. Day	0.38	25.00
Lot B, Sec. 15, as shown on plat, Hickory scrub	L. F. Jackson	0.38	25.00
Lot C, Sec. 15, as shown on plat, Hickory scrub	J. E. Bettler	0.19	25.00
			$8,775.00
			23,040.00
			$31,815.00

15 Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
Lot D, Sec. 15, as shown on plat, Hickory scrub	E. Day	0.38	$25.00
Lot E, Sec. 15, as shown on plat, Hickory scrub	R. V. Douglas	0.58	50.00
Lot F, Sec. 15, as shown on plat, Heavy scrub	C. J. Root	0.38	50.00
Lot G, Sec. 15, as shown on plat, Heavy scrub	E. Day	0.76	75.00
Lot H, Sec. 15, as shown on plat, Heavy scrub	E. Day	0.38	50.00
Lot I, Sec. 15, as shown on plat, Palmetto scrub	Sallie Magruder	0.28	25.00
Lot J, Sec. 15, as shown on plat, Palmetto scrub	C. B. Magruder	0.28	25.00
Lot K, Sec. 15, as shown on plat, Palmetto scrub	H. J. Magruder	0.28	25.00
Lot L, Sec. 15, as shown on plat, Palmetto scrub	S. P. Eby	0.28	25.00
Lot M, Sec. 15, as shown on plat, Palmetto scrub	Janie Magruder	0.28	25.00
Lot N, Sec. 15, as shown on plat, Palmetto scrub	C. F. Magruder	0.28	25.00
Lot O, Sec. 15, as shown on plat, Palmetto scrub	C. B. Magruder	1.67	100.00
Lot P, Sec. 15, as shown on plat, Palmetto scrub	C. B. Magruder	0.56	50.00
Lot Q, Sec. 15, as shown on plat, Palmetto scrub	C. B. Magruder	0.28	25.00
Lot R, Sec. 15, as shown on plat, Palmetto scrub	Sarah R. Wynn	0.76	50.00
Lot S, Sec. 15, as shown on plat, Palmetto scrub	Bailey Magruder	0.28	25.00
S. ¾ of S. E. ¼ of Sec. 15, N. 1/3 cut through hickory ridge S. 2/3 fill through marsh	Smith & Thomas, Tr.	3.93	200.00
N. ½ of S. ½ of Lot 2, Sec. 14, Fill through marsh	M. C. Salmon	0.20	25.00
S. ¼ of Lot 2, Sec. 14, Fill through marsh	Gray & Monzinge	0.80	50.00
Lot 1 of Porter's subd. Sec. 23. Cut through hickory and palmetto scrub	W. H. Matthews	0.41	25.00
			$950.00
			31,815.00
			$32,765.00

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Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
Lot 2 of Porter's subd. Sec. 23, Cut through hickory scrub	W. P. Noble	0.41	$25.00
Lot 3 of Porter's subd. Sec. 23, cut through heavy scrub	J. Neikirk	0.41	25.00
Lot 4 of Porter's subd. Sec. 23, Cut through hickory scrub	Mary D. Zimmerman	0.41	25.00
Lots 5-6-7-8 Porter's subd. Sec. 23. Cut & fill through hickory scrub	Sarah McF. Porter	1.65	125.00
N. 6 chs. of Lot 2, Sec. 23, High hickory scrub, deep R. R. cut through land	B. L. Johnson	0.95	100.00
S. 14 chs. of S. W. ¼ of N. W. ¼ Sec. 23, except part included in Coquina, Hickory scrub	Sarah McF. Porter	2.40	150.00
All plat of Coquina except land sold to Swinson, N. part deep cut in hickory scrub, S. part chiefly marsh	Sarah McF. Porter	3.90	200.00
Lots 3-4-5 Block 9, Coquina, Deep cut through hickory scrub	E. E. Swinson	0.19	50.00
Triangular piece in Lot 3 W. of R. R. Sec. 23, N. 1/3 high hickory scrub S. 2/3 low palmetto scrub	Pritchett Bros.	0.90	50.00
A strip 324 ft. wide S. of Coquina, Palmetto scrub	T. V Dutton	0.62	25.00
A strip 137 ft. wide S. of Dutton, Sec. 23, Marsh	J. R. Rouse	0.28	25.00
All of Lot 4, Sec. 23 S. of Rouse, Marsh on N. part, Palmetto scrub on S. part	Sarah McF. Porter	2.75	75.00
N. W. ¼ of N. W. ¼ Sec. 26, Palmetto scrub & small myrtle swamp	U. S. of America	.28	75.00
All Lot 2, Sec. 26, Low palmetto and oak scrub	J. F. Wooten	3.28	150.00
N. W. ¼ of S. E. ¼ Sec. 26, Low oak scrub and bay gall on E. edge	J. Kendig	3.28	150.00
N. ½ of S. W. ¼ of S. E. ¼, Sec. 26, Palmetto scrub on W. & Bay gall on E.	H. M. Lee	1.68	75.00
S. ½ Lot 4, Sec. 26, Palmetto scrub on N. Bay gall myrtle swamp on S.	R. E. Mims	1.60	75.00
			$1,400.00
			[See below]

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Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
N. 15.28 chs. of N. E. ¼ of N. E. ¼ Sec. 35, Bay gall & myrtle swamp	R. E. Mims	2.87	$75.00
S. 9.67 chs. of N. 24.95 chs. of E. ½ of N. E. ¼ Sec. 35, Palmetto scrub	J. W. Naylor	1.65	50.00
S. 15 chs. of S. E. ¼ of N. E. ¼ Sec. 35, Palmetto scrub on W. side, Bay gall & heavy palmetto on E. side	A. A. Taylor	2.40	75.00
N. E. ¼ of S. E. ¼, Sec. 35, scrub & spruce pine, white sand	U. S. of America	1.73	50.00
Lot 2, Sec. 36, Bay gall and heavy palmetto	A. A Taylor	1.45	50.00
Lot 3, Sec. 36, Chiefly scrub small bay gall on E. side	I. M. Cox	3.18	75.00
	Township 26 S. R. 36 East.		
W. ½ of N. E. ¼ Sec. 1, scrub & spruce pine, white sand	U. S. of America	5.43	100.00
S. ½ of Lot 2, Sec. 1, white sand scrub	S. T. Willets	0.91	25.00
E. ½ of S. W. ¼ Sec. 1, scrub & spruce pine, white sand	C. J. Hart	6.34	150.00
N. E. ¼ of N. W. ¼ Sec. 12, scrub & spruce pine, white sand	C. J. Hart	1.70	50.00
N. ¾ of Lot 1, Sec. 12, scrub & spruce pine, white sand	S. T. Willets	0.15	10.00
S. 5 chs. of Lot 1 & N. 3.38 chs. of Lot 2, Sec. 12, Poor white sand scrub	C. R. Stewart	1.46	40.00
S. 16.32 chs. Lot 2, Sec. 12, poor white sand scrub	Mary Stewart	2.52	60.00
			$810.00
			32,765.00
			$33,575.00

18 Sanford Branch from County Line to Titusville.

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
Township 20 S. R. 34 East.			
All Section 5, Low pine land and marsh	Hodges, O'Hara & Russell	9.89	$100.00
All Sec. 4, low pine land and marsh	Hodges, O'Hara & Russell	6.50	75.00
All Sec. 9, low pine land and marsh	Consolidated Land Co.	9.00	100.00
Lots 3-4-5 Fontaine Grant, low pine land, bay galls & scrub	F. B. Rogers et al	42.12	400.00
Segui Grant, low pine land and marsh	William Dallam	51.50	500.00
S. W. part Acosta Grant, low pine land and marsh	E. S. Quimby	19.09	200.00
Segui Grant S. of Acosta Grant, low pine land and marsh	William Dallam	0.21	15.00
Lot 3, Sec. 36, Pine land	Pritchett Bros.	1.60	100.00
Lot 2, Sec. 36, Pine land	Pritchett Bros.		50.00
N. 23 acres of S. ½ of Lot 2, Sec. 36, Pine land	W. T. McCullough	1.74	50.00
N. 6 acres of S. 17 acres, Lot 2, Sec. 36, Pine land	E. B. Carter	0.45	25.00
S. 5½ acres of Lot 2, Sec. 36, Fair pine land	M. J. Coleman	0.90	25.00
Township 21 S. R. 34 East.			
N. W. ¼ of N. E. ¼ Sec. 1, Pine land	M. J. Coleman	1.50	50.00
E. ½ of N. E. ¼ Sec. 1, heavy timber	Consolidated Land Co.	4.22	100.00
Township 21 S. R. 35 East.			
S. W. ¼ of N. W. ¼ & N. W. ¼ of S. W. ¼ Sec. 6, Heavy timber	W. A. Ronald	4.15	100.00
S. W. ¼ of S. W. ¼ Sec. 6, Heavy timber	R. E. Mims	1.46	75.00
S. E. ¼ of S. W. ¼ Sec. 6, Heavy timber	Consolidated Land Co.	0.81	50.00
			$2,015.00
			33,575.00
			$35,590.00

19 Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
N. E. ¼ of N. W. ¼, Sec. 7, Heavy timber	J. P. Rose	2.25	$100.00
S. E. ¼ of N. W. ¼ Sec. 7, Heavy timber	Bryan & O'Neal	1.00	50.00
S. W. ¼ of N. E. ¼ Sec. 7, Heavy timber	I. C. Brown	1.81	100.00
W. ½ of S. W. ¼ of R. R. Sec. 7, Pine land	R. J. Herndon	1.41	75.00
W. ½ of S. E. ¼ E. of R. R. Sec. 7, except 10 acres to Wilcox Timber land	J. W. Sharpe	1.22	50.00
N. E. ¼ of N. W. ¼ of S. E. ¼, Sec. 7, Pine land	I. M. Wilcox	0.30	25.00
S. E. ¼ of S. E. ¼ Sec. 7, Pine timber	Park & Norwood	1.40	75.00
N. E. ¼ of N. E. ¼, except 5 acres to railroad Sec. 18, Big fill through pine timber	Harry Roberts	2.60	100.00
4 acres of S. E. ¼ of N. E. ¼ Sec. 18, Pine land, with dwelling	C. Hamilton	0.69	75.00
16 acres of S. E. ¼ of N. E. ¼ Sec. 18, Pine land	H. R. Lindsay	1.30	50.00
S. of N. of plat of Mims in S. W. ¼ of S. W. ¼, Pine land	W. T. China	1.51	75.00
Plat of Mims.			
Lots 3-4-12-13-26-42-43 & 61 Carlile Ward, Vacant lots	R. E. Mims		100.00
Lot 25, Carlile Ward, vacant	C. S. Ballough		25.00
Lots 13 & 14 China Ward, vacant lots	R. E. Mims		75.00
Lot 29 China Ward, general store	W. A. Green		50.00
Lots 30 & 45 China Ward, Mims Hotel	R. E. Mims		100.00
Lots 46-61-62-77 China Ward, Vacant lots	R. E. Mims		50.00
W. ¾ of S. W. ¼ of S. W. ¼ Sec. 17, Pine land	M. L. Banister	1.05	50.00
N. 11 chs. of S. ½ of S. W. ¼ Sec. 17, Pine land	S. T. Boynton	0.20	25.00
			$1,250.00
			35,590.00
			$36,840.00

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Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
S. 9 acres of S. E. ¼ of S. W. ¼ Sec. 17, Pine land	R. E. Mims	1.00	$75.00
Lot A of E. ½ of N. W. ¼ Sec. 20 as shown on plat. An old field	J. N. Thompson	0.56	50.00
Lot B of E. ½ of N. W. ¼ Sec. 20 as shown on plat. Orange grove and dwelling	T. T. Weltch		400.00
Lot C of E. ½ of N. W. ¼ Sec. 20, same as preceding	T. T. Weltch		300.00
Lot D of E. ½ of N. W. ¼ Sec. 20 as shown on plat. Orange grove and dwelling	H. A. Campbell		200.00
Lot E of E. ½ of N. W. ¼ Sec. 20, as shown on plat. Orange grove and dwelling	Moore & Crump		200.00
Lot F of E. ½ of N. W. ¼ Sec. 20, as shown on plat. Orange grove and dwelling	R. Rosker		200.00
Lot G of E. ½ of N. W. ¼ Sec. 20, as shown on plat, Oak scrub	O. Butler	0.20	25.00
Lot H of E. ½ of N. W. ¼ Sec. 20, as shown on plat, Oak scrub	Florida Loan & Trust Co.	0.28	25.00
Lot I of E. ½ of N. W. ¼ Sec. 20, as shown on plat, old clearing	J. H. Rocker	0.55	50.00
Lot J of E. ½ of N. W. ¼ Sec. 20, as shown on plat, Pine land	Sam Moye	0.15	25.00
N. 3 chs. of S. ½ of S. W. ¼ of N. E. ¼ Sec. 20, Deep cut in Pine land	J. A. Duren	0.18	25.00
S. 6 chs. of S. W. ¼ of N. E. ¼ E. of R. R. Sec. 20, Deep cut through pine land	J. T. McGuire	0.40	50.00
S. 7 chs. of S. W. ¼ of N. E. ¼ W. of R. R. Sec. 20, Deep cut through spruce pine	S. Warren	0.40	50.00
N. 10 acres of N. W. ¼ of S. E. ¼ Sec. 20. Deep cut through spruce pine	S. Warren	0.33	50.00
S. ¾ of N. W. ¼ of S. E. ¼ Sec. 20, Deep cut through spruce pine	W. N. Hendry	1.00	100.00
			$1,725.00
			36,840.00
			$38,565.00

Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
½ of N. E. ¼ of S. W. ¼ of N. E. ¼ Sec. 20, Pine land	R. E. Mims	0.81	$50.00
¾ of S. ½ of S. E. ¼ of Sec. 20, Pine land	J. B. Terry	2.44	150.00
5 acres of N. E. ¼ of N. E. ¼ Sec. 29, Deserted grove	B. F. Ives	0.17	75.00
3 acres of N. 8 acres of W. ¾ of N. E. ¼ of N. E. ¼, Sec. 29, Hammock land	E. Wallace	0.13	50.00
2 acres of N. 8 acres of W. ¾ of N. E. ¼ of N. E. ¼, Sec. 29, Hammock land	H. Carlile	0.09	40.00
2 acres of N. 14 acres of W. ¾ of N. E. ¼ of N. E. ¼ Sec. 29, Oak scrub	Rod Smith	0.09	15.00
10 acres of S. 20 acres of W. ¾ of N. E. ¼ of N. E. ¼, Sec. 29, Hammock and scrub	E. H. Carlile	0.33	50.00
10 acres of W. ¾ of N. E. ¼ of N. E. ¼ Sec. 29, Hammock	J. B. Terry	0.56	75.00
E. ¼ of N. E. ¼ of Sec. 29, Rich hammock, cleared and in garden	T. J. Cockshutt	0.83	150.00
½ of S. W. ¼ of N. W. ¼, Sec. 28, Orange grove	A. M. Terwillegar	0.60	75.00
Plat of La Grange.			
Lots 34-35-36-37-38-39-40-41, Vacant lots	L. Kitching		100.00
½ of N. W. ¼ of S. W. ¼ of Sec. 28, Oak scrub	George Gardner	1.81	75.00
½ of N. W. ¼ of S. W. ¼ of Sec. 28, Oak scrub	L. A. Coleman	0.90	50.00
E. ¼ of S. W. ¼ except 4 ac to H. Carlile, Sec. 28, oak scrub	E. M. S. DeGrauw	1.07	60.00
4 acres of S. E. ¼ of S. W. ¼ E. of F. R. Sec. 28, Oak scrub	Henry Carlile	0.03	15.00
E. ¼ of N. W. ¼ Sec. 33, Poor pine land	P. E. Puckett	3.40	75.00
1/3 of S. W. ¼ of N. W. ¼, Sec. 33, Oak scrub	Brown & Tuttle	0.61	50.00
Lots 1 & 13 subd. Lot 32 Sec. 33, Oak scrub	D. W. Tuttle		50.00
½ of S. E. ¼ Sec. 33, Pine lands	M. Goldsmith		100.00
			$1,305.00
			38,565.00
			$39,870.00

22 Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
The Sanford Branch Runs Through Titusville in Front of the Following Properties.			
Rice Addition.			
Lots 4 and 5, vacant	E. M. S. DeGrauw		$100.00
N. W. ¼ of N. ½ Lot 11, vacant	T. W. Lund		25.00
S. ½ of N. ¼ Lot, 11, vacant	E. H. Rice		25.00
S. ½ of Lot 11	E. M. S. De Grauw		50.00
Subdivision of E. ½ of N. E. ¼ Sec. 4 T. 22 S. R. 35 E.			
Lots 42 & 41, vacant	Robbins Graham & Tuttle		100.00
Lot 40, vacant	F. E. Stone		25.00
Lot 35, vacant	E. G. Harris		125.00
N. 2/3 Block 6, vacant	E. G. Harris		50.00
Lot 39, Block 36, vacant	Brown Grannis & Wilbur		50.00
Lot 40 Block 37, dwelling	W. F. Shoemaker		100.00
S. 2/3 Block 37, vacant	Brown Grannis & Wilbur		150.00
Lot 200' x 300' in S. W. corner of N. W. ¼ of N. W. ¼ Sec. 3, vacant	Gertrude Jones		150.00
Robbins & Graham's Addition			
Lots 38-37 & 35, vacant	F. E. C. R'y Co.		150.00
Tanic Acid Factory Lot	W. M. Brown		100.00
W. 1/3 of N. ½ of N. W. ¼ of N. W. ¼ Sec. 3, vacant	J. Einig		250.00
Lots 40-n. B. D. 3-2 & E used for railroad purposes	F. E. C. R'y Co.		300.00
Fisher's Addition			
Lots 1 & 2, Block D, vacant	E. M. Fisher		100.00
Lot 2 Block B, vacant	J. Myers		50.00
Lot 1 Block B, vacant	J. Fisher		50.00
Lot 2 Block A, vacant	L. A. McKenzie		50.00
Lot 1 Block A, Oil House	Standard Oil Co.		50.00
E. 1/3 of N. ½ of N. W. ¼ of N. W. ¼, Lumber yard	Bond & Conrad		250.00
			$3,300.00
			39,870.00
			$43,170.00

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Description of land through which R/W runs	Owner's Name	Acreage of R/W	Value of R/W
	Le Baron's Map of Titusville		
			$43,170.00
Lots 8 & 9 W. ½ Block 3, Pump house & tank	F. E. C. R'y Co.		50.00
Lot 10 E. ½ Block 3, vacant	A. C. Gardner		50.00
Lot 11 E. ½ Block 3, dwelling	E. W. Hall		200.00
Block 2, old Grand View Hotel	E. S. Wiley		100.00
Lots 6-5-4-3-2 Block 1, vacant	E. S. Wiley		200.00
Lot 1 Block 1, Blacksmith shop	J. D. Ennis		50.00
W. 100 ft. of Lot 2 Block G (P. Nelson), vacant	P. Nelson		50.00
E. part Lot 2, Block G, Dwelling	M. Simonson		200.00
Lots 1 & 2, Block F, Vacant	F. E. C. R'y Co.		100.00
N. ½ Lots 3-2 & 1, Block E, Vacant	F. E. C. R'y Co.		150.00
Lot 3 Block 6, Vacant	D. L. Gaulden		50.00
Lot 2 Block 6, Vacant	Unknown		50.00
Lot 1 Block 6, Vacant	T. Tillman		50.00
N. ½ Block 5, Cooper shop	E. H. Rice		150.00
Lot 2, E. ½ Block 4, Vacant	E. W. Hall		50.00
E. ½ Lot 1 E. ½ Block 4, Dwelling	J. L. Carruthers		100.00
W. ½ Lot 1 E. ½ Block 4, Dwelling	T. W. Lund		100.00
N. ½ Lots 1 & 2, W. ½ Block 4, Dwelling	J. T. Price		100.00
			$44,970.00

24 List of Land Owned by the Florida East Coast Railway Company in Brevard County, Outside the Right of Way.

Description	Sec.	Tp.	Rge	Value
Lot 100'x200' at East Aurantia Section House	38	20	35	$50.00
5 acres in N. W. cor. of N. E. ¼ of N. E. ¼	18	21	35	50.00
Lot 100'x300' at Nims on W. side R/W in N. W. ¼ of S. W. ¼	17	21	35	60.00
3 acres in S. E. corner of Lot 3	28	21	35	60.00
Lot 52'x190½' N. of Coleman's Addition to Titusville	34	21	35	100.00
Lot 6 Subd. W. ½ Block 3, Titusville	3	22	35	150.00
Lot 8 Subd. W. ½ Block 3 "	"	"	"	150.00
Lot 9 Subd. W. ½ Block 3 "	"	"	"	150.00
Lot 8 Block 9 "	"	"	"	300.00
Lot 10 " 9 "	"	"	"	300.00
Lot 1 " 10 "	"	"	"	300.00
Lot 2 " 10 "	"	"	"	165.00
Lot 3 " 10 "	"	"	"	600.00
Lot 6 " 10 "	"	"	"	250.00
Lot 8 " 10 "	"	"	"	250.00
Lot 9 " 10 "	"	"	"	450.00
Lot 11 " 10 "	"	"	"	300.00
Lot 12 " 10 "	"	"	"	125.00
Lot 1 " 16 "	"	"	"	125.00
W. ½ Lot 5 Block 16 "	"	"	"	100.00
Lot 7 " 16 "	"	"	"	200.00
Lot 10 " 16 "	"	"	"	100.00
Lot 1 " 21 "	"	"	"	300.00
Lot 2 " 21 "	"	"	"	300.00
Lot 3 " 21 "	"	"	"	200.00
Lot 4 " 21 "	"	"	"	200.00
Lot 5 " 21 "	"	"	"	150.00
Lot 6 " 21 "	"	"	"	500.00
Lot 7 " 21 "	"	"	"	1,200.00
Lot 9 " 21 "	"	"	"	400.00
				$7,685.00

25	Description	Sec.	Tp.	Rge	Value
Lot 1	Block 20 Titusville	3	22	35	$500.00
Lot 2	" 20 "	"	"	"	500.00
Lot 3	" 20 "	"	"	"	250.00
Lot 4	" 20 "	"	"	"	250.00
Lot 5	" 20 "	"	"	"	250.00
Lot 6	" 20 "	"	"	"	250.00
Lot 8	" 20 "	"	"	"	500.00
Lot 1	" 19 "	"	"	"	125.00
Lot 2	" 19 "	"	"	"	125.00
Lot 3	" 19 "	"	"	"	125.00
Lot 4	" 19 "	"	"	"	125.00
Lot 5	" 19 "	"	"	"	125.00
Lot 6	" 19 "	"	"	"	125.00
Lot 7	" 19 "	"	"	"	125.00
Lot 8	" 19 "	"	"	"	125.00
Lot 9	" 19 "	"	"	"	125.00
Lot 11	" 19 "	"	"	"	125.00
Lot 12	" 19 "	"	"	"	125.00
Lot 5	Block C Fisher's Addition to Titusville	"	"	"	100.00
Lot 1	Robbins & Graham's Addition to Titusville	"	"	"	250.00
Lot 2	" " " "	"	"	"	250.00
Lot 3	" " " "	"	"	"	250.00
Lot 4	" " " "	"	"	"	250.00
Lot 5	" " " "	"	"	"	250.00
Lot 6	" " " "	"	"	"	250.00
Lot 7	" " " "	"	"	"	250.00
Lot 9	" " " "	"	"	"	250.00
Lot 11	" " " "	"	"	"	100.00
Lot 35	" " " "	"	"	"	100.00
Lot 37	" " " "	"	"	"	100.00
Lot 38	" " " "	"	"	"	100.00
Lot 39	" " " "	"	"	"	100.00
Lot 40	" " " "	"	"	"	100.00
					$6,725.00
					7,685.00
					$14,410.00

26 Description					Sec.	Tp.	Rge	Value
Lot 41	Robbins & Graham's	Addition	to	Titusville	3	22	35	$100.00
Lot 42	"	"	"	"	"	"	"	100.00
Lot 43	"	"	"	"	"	"	"	100.00
Lot 44	"	"	"	"	"	"	"	100.00
Lot A	"	"	"	"	"	"	"	375.00
Lot B	"	"	"	"	"	"	"	250.00
Lot C	"	"	"	"	"	"	"	375.00
Lot D	"	"	"	"	"	"	"	250.00
Lot E	"	"	"	"	"	"	"	250.00
Lot F	"	"	"	"	"	"	"	150.00
Lot G	"	"	"	"	"	"	"	250.00
Lot H	"	"	"	"	"	"	"	175.00
Lot I	"	"	"	"	"	"	"	600.00
Lot J	"	"	"	"	"	"	"	175.00
Lot K	"	"	"	"	"	"	"	600.00
Lot L	"	"	"	"	"	"	"	175.00
Lot M	"	"	"	"	"	"	"	1,000.00
Lot N	"	"	"	"	"	"	"	1,000.00
Lot 1	Block F	Titusville			"	"	"	125.00
Lot 2	" F	"			"	"	"	125.00
Lot 3	" F	"			"	"	"	175.00
Lot 4	" F	"			"	"	"	175.00
Lot 5	" F	"			"	"	"	175.00
Lot 6	" F	"			"	"	"	175.00
Lot 7	" F	"			"	"	"	175.00
N. ½ Lot 1	" E	"			"	"	"	125.00
N. ½ Lot 2	" E	"			"	"	"	125.00
N. ½ Lot 3	" E	"			"	"	"	125.00
All Section 640 acres					12	21	35	960.00
All fractional Section 222 acres					26	21	35	333.00
W. ½ of N. E. ¼ & Frac. W. ½ Section 340 acres					8	22	35	720.00
All fractional Section 24 in Dele-pine Grant 308 ac.					24	23	35	1,200.00
Lot S. of Public Road & W. of R/W in N. E. ¼ of N. E. ¼					25	23	35	100.00
								$10,838.00
								14,410.00
								$25,248.00

27 Description	Sec.	Tp.	Rge	Value
Additional strip E. of R/W 25'x13508 in S. E. ¼ of S. E. ¼	7	24	36	$100.00
Lot 18 Dixon's Addition to Cocoa	33	24	36	100.00
E. side of depot at Cocoa in S. part Lot 1	33	24	36	200.00
Lots B, C & E, Assessor's plat, Cocoa	"	"	"	2,000.00
Lot K & E. ½ Lot M Assessor's plat, Cocoa	"	"	"	1,500.00
Lot 2 Indian River City plat, Cocoa	"	"	"	400.00
Lot within the Y at Rockledge	4	25	36	100.00
Lot 28' x 800' E. of R/W at Coquina Station	23	"	"	100.00
				$29,748.00
				44,970.00
				$74,718.00
				37,359.00
				$112,077.00
[Add amount omitted, page 16]			$1,400.00	
			700.00	
				2,100.00
				$114,177.00

[Endorsed]: Filed in evidence marked Petitioner's Exhibit 1, Jan'y 15, 1912.

1

EXHIBIT 2.

Valuation of Lots Belonging to the Florida East Coast Ry. in Melbourne, Brevard County, Florida. Not Including Buildings.

Lots.	Block.	Each
Lot 11, Block F, Metcalf's Addn.		$100.00
13 & 14	12	300.00
15 & 16	15	350.00
15 & 16	19	500.00
8	21	700.00
7 & 8	28	250.00
1 & 4	29	200.00
3, 5, 7, 9, 11 & 13	42	50.00
3 & ½ acres in Lot 2, Sec. 2, Tp. 28 S. R. 37 E.		875.00
West 10 acres of the east 25 acres of the SW¼ of the SW¼ Sec. 2, Tp. 28 S. R. 37 E. for Section House and Ry. purposes		2,000.00
Lot 180 ft by 120 in NE ¼ of Sec. 3, Tp. 28 S. R. 37 E.		150.00
Lot 100′ by 200′ in SW ¼ of NE ¼ Sec. 28 Tp. 29 S. R. 38 E.		300.00

Richard W. Goode.

2

Valuation of Lots Used for Railroad Purposes and Belonging to the F. E. C. Ry. in Eau Gallie, Brevard County, Florida. Not Including Buildings.

Lots.	Block.	Each
24, 25, 26 & 27	B	$225.00
1, 3, 5, 7, 10, 15 & 17	14	50.00
1, 4, 5, 7, 9, 11 & 13	15	75.00
3, 6, 9, 11, 13, 14, 15 & 17	16	100.00
3, 6, 9, 10, 11, 13, 14, 15 & 16	17	125.00
1, 2, 3, 4, 5, 6, 7 & 8	18	150.00
1, 2 3, 4, 5, 6, 7, 8, 10, 14 & 16	19	200.00
5, 6, 7, 8, 9 & 12	20	250.00
1, 2, 3 & 4	21	200.00
6 & 8	25	150.00
3, 5, 7, 9 & 12	27	100.00
1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 14, 15 & 16	28	100.00
1, 3, 4, 5, 7, 8, 10, 11, 13, 14, 15 & 16	29	100.00
3, 5, 11, 13 & 15	30	100.00
1, 3, 7, 11 & 13	31	100.00
9, 10, 11, 13, 14, 15 and 16	32	75.00
1, 2, 3, 4, 5, 6, 7 & 8	33	50.00
5	41	100.00
3	43	100.00

Richard W. Goode.

3

Valuation of Lots Belonging to the Florida East Coast Ry. in Eau Gallie, Brevard County, Florida. Not Including Buildings.

Lots.	Block	Each.
7	57	$50.00
3 & 9	58	50.00
9	69	50.00
9	67	50.00
9	70	50.00
1, 3, 8 & 9	71	50.00
3 & 8	78	50.00
1 & 2 L. A. Roesch Addn.	E	50.00
Part of out Lot 1, Sec. 16, Tp. 27 S. R. 37 E.	E	250.00
Total		$15,875

Richard W. Goode.

4

Valuation of Lots Belonging to the Florida East Coast Railway, Brevard County—Not Including Buildings.

MELBOURNE	Valuation.	Amount.
Lot 11, Block F, Metcalf's Addn.	$100.00 Ea	$100.00
Lots 13 and 14, Block 12	300.00 "	600.00
Lots 15 and 16, Block 15	350.00 "	700.00
Lots 15 and 16, Block 19	500.00 "	1000.00
Lot 8, Block 21	700.00 "	700.00
Lots 7 and 8, Block 28	250.00 "	300.00
Lots 1 and 4, Block 29	200.00 "	400.00
Lots 3, 5, 7, 9, 11 and 13, Block 42	50.00 Ea	300.00
3½ acres in Lot 2, Sec. 2-28-37 3.50 acres	875.00	875.00
W 10 ac. of E 25 ac of SW¼ of SW¼, Sec. 2-28-37	2000.00	2000.00
Lot 180' x 120' in NE¼ of 3-28-37	150.00	150.00
Lot 100 x 200' in SW¼ of NE¼ 28-29-38	200.00	200.00
Lots 24, 25, 26, 27, Block B, Eau Gallie	225.00 Ea	900.00
Lots 1, 3, 5, 7, 10, 15 and 17, Block 14, Eau Gallie	50.00 "	350.00
Lots 1, 4, 5, 7, 9, 11 and 13, Block 15 Eau Gallie	75.00 Ea	525.00
Lots 3, 6, 9, 11, 13, 14, 15 and 17, Block 16 Eau Gallie	100.00 "	800.00
Lots 3, 6, 9, 10, 11, 13, 14, 15 and 16, Block 17, Eau Gallie	125.00 "	1125.00
Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 18, Eau Gallie	150.00 "	1200.00
Lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 14 and 16, Block 19 Eau Gallie	200.00 "	2200.00
Lots 5, 6, 7, 8, 9 and 12, Block 20 Eau Gallie	250.00 "	1500.00
Lots 1, 2, 3 and 4, Block 21 Eau Gallie	200.00 "	800.00
Lots 6 and 8, Block 25 Eau Gallie	150.00 "	300.00
Lots 3, 5, 7, 9 and 12, Block 27 Eau Gallie	100.00 "	500.00
Lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 14, 15 and 16, Block 28 Eau Gallie	100.00 "	1300.00
Lots 1, 3, 4, 5, 7, 8, 10, 11, 13, 14, 15 and 16, Block 29 Eau Gallie	100.00 "	1200.00
Lots 3, 5, 11, 13 and 15, Block 30 Eau Gallie	100.00 "	500.00
Lots 9, 10, 11, 13, 14, 15 and 16, Block 32 Eau Gallie	75.00 "	525.00
Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 33 Eau Gallie	50.00 "	400.00
Lot 5, Block 41 Eau Gallie	100.00 "	100.00
Lot 3, Block 43 Eau Gallie	100.00 "	100.00
Lot 7, Block 57 Eau Gallie	50.00 "	50.00
Lots 3 and 9, Block 58 Eau Gallie	50.00 "	100.00
Lot 9, Block 66 Eau Gallie	50.00 "	50.00
Lot 9, Block 67 Eau Gallie	50.00 "	50.00
Lot 9, Block 70 Eau Gallie	50.00 "	50.00
Lots 1, 3, 8 and 9, Block 71 Eau Gallie	50.00 "	200.00
Lots 3 and 8, Block 78 Eau Gallie	50.00 "	100.00
Lots 1 and 2 L. A. Roesch Adn. Blk E. Eau Gallie	50.00 "	100.00
Part of outlet No. 1 Secs. 16-27-37	250.00 "	250.00
		$23300.00

5 November 8th, 1907.

Valuations of Lands Belonging to the Florida East Coast Ry., and Right of Way, but not Including Buildings. Value of Right of Way in the Following Sections.

	Section.	Township.	Range.		
	13	26S.	26E.	$450.00	
	18	26	37	150.00	
	19	26	37	600.00	
	30	26	37	360.00	
	32	26	37	360.00	
	5	27	37	600.00	
	8	27	37	600.00	
	16	27	37	2,400.00	
	21	27	37	1,100.00	
	27 & 28	27	37	300.00	
NW¼	34	27	37	150.00	
NW¼ of SE¼	34	27	37	100.00	
SE¼ of SE¼	34	27	37	200.00	
	2 & 3	28	37	4,500.00	
	11	28	37	900.00	
	13 & 14	28	37	400.00	
	24	28	37	550.00	
	24	28	37	315.00	
N½ of SW¼ of SE¼	34	27	37	1,000.00	20 acres
	30	28	38	100.00	
	31	28	38	600.00	
				$15,035.00	

Richard W. Goode

6

Valuation of Land Belonging to the Florida East Coast Ry. used Right of Way, but not Including Buildings.

Value of right of way in the following sections:

Section.	Township.	R.	
5 & 6	29S.	38E.	$360.00
8	29	39	300.00
16 & 17	29	38	600.00
21	29	38	300.00
28	29	38	1,200.00
34	29	38	600.00
3	30	38	600.00
10 & 11	30	38	600.00
14	30	38	450.00
23	30	38	300.00
Over Fleming Grant to Sebastian River			300.00
			$5,610.00

Richard W. Goode

[Endorsed] Filed in evidence marked Petitioner's Exhibit 2, Jan'y 15, 1912.

7 EXHIBIT NO. 2.

Parts of Section.		Sec.	T.	R.	Acres.	Valuation.	Amount.
From Co. Line to Mile P. 142		6	20	35	1.56 No deed 1.60	10.00	$ 31.60
From M. P.	to M. P						
142	143	6-7	20	35	4.61 No deed 6.36	16.70	183.19
143	144	7-8-17	20	35	13.00	17.30	224.90
	Grant						
144	145		20	35	20.00	11.40	228.00
145	146		20	35	20.00	11.40	228.00
146	147		20	35	17.00	11.40	193.80
147	148	32-33	20-21	35	12.50	20.00	250.00
148	149	4-9	21	35	7.00 1.52 No deed	18.00	126.00
149	150	9-16	21	35	6.94	23.50	198.81
150	151	16-21	21	35	12.12	40.00	484.80
151	152	21-28	21	35	6.50	60.00	390.00
152	153	28-33	21	35	9.50	70.00	665.00 2,275.00
153 Titusville		33-34	21	35	5.60	100.00	560.00 4,550.00
Titusville to M. P. 155		3	22	35	9.30	28.00	260.40
M. P. to M. P.							
155	156	Grant	22	35	12.12	16.50	200.00
156	157	"	22	35	12.12	16.50	200.00
157	158	"	22	35	12.12	16.50	200.00
158	159	"	22	35	12.12	16.50	200.00
159	160	"	22	35	12.12	31.60	164.83
160	161	"	22-23	35	12.12	8.25	100.00
161	162	"	23	35	12.12	16.50	200.00
162	163	"	23	35	12.12	10.00	121.20
163	164	"	23	35	12.12	13.50	163.62
164	165	" 24	23	35	12.12	23.00	278.76
165	166	24-25	23	35	12-12 5.32 No deed	30.00	363.60
166	167	25-36 31	23	36	6.80	26.00	315.12
167	168	31-6	23-24	36	11.00	36.10	397.10
168	169	6-7	24	36	12.12	50.00	606.00
169	170	7-18-17	24	36	12.12 0.69 No deed	30.00	363.60
170	171	17-20 20-21	24	36	11.43 0.78 No deed	40.50	490.86
171	172	28	24	36	11.34 0.46 No deed	66.40	804.76
172	173	28-33	24	36	9.55	72.50	725.72 300.00
Cocoa							
173	174	33-4	24-25	36	3.08	300.00	924.00 4,375.00
174	175				13.62	549.00	7,477.38
Rockledge							
175	176	4-9-10	25	36	13.01	190.00	2,471.90
176	177	10-15	25	36	13.15	72.00	946.80
177	178	15-14-23	25	36	14.63	65.10	952.41
178	179	23-26	25	36	8.64 (3.20 No deed)	36.00	426.24
179	180	26-35	25	36	11.70	36.00	453.60
180	181	35-36-1	25 }		7.85 No deed		
			26 }	36	4.27	22.40	271.48
181	182	1-12	26	36	12.12	25.60	310.72
							$35,662.60

8 TITUSVILLE BRANCH. BREVARD COUNTY.

Parts of Section.		Sec.	T.	R.	Acres.	Valuation.	Amount
From Titusville to M. P.							
	1	33	21	35	0.84		$3,900.00
M. P.	to M. P.				5.14 No deed		225.00
1	2	33-28	21	35	4.52		275.00
		28-29			4.59 No deed		
2	3	20	21	35	4.50	116.00	1,054.44
3	4	20-17	21	35	5.05	346.00	1,747.30
					3.30 No deed		
4	5	17-18	21	35	5.20	44.10	374.85
					1.36 No deed		
5	6	18-7	21	35	1.80	52.10	425.13
					2.39 No deed		
6	7	7-6-1	21	34-35	7.26	35.70	325.20
					11.09 No deed		
7	8	1-36	21-20	34	6.86	37.60	674.92
8	9	38-42	20	34	24.24	10.00	242.40
9	10	42	20	34	24.24	10.00	242.40
10	11	42-41	20	34	24.24	10.00	242.40
11	12	41	20	39	24.24	10.00	242.40
					5.00 No deed		
12	13	41-9	20	34	13.00	10.00	180.00
					8.04 No deed		
13	14	9-4-5	20	34	4.08	10.00	121.20
					0.46 No deed		
14	15	5	20	34	11.66	10.00	121.20
							$10,395.00

9 BREVARD COUNTY.

		Sec.	T.	R.	Acres.	Valuation.	Amount.
From Co. line to M. P. 142		6	20	35	3.16	10.00	$ 31.60
From M. P. to M. P. 142	143	6-7	20	35	10.97	16.70	183.19
143	144	Grant 7-8-17	20	35	13.00	17.30	224.90
144	145	"	20	35	20.00	11.40	228.00
145	146	" 20	20	35	20.00	11.40	228.00
146	147		20	35	17.00	11.40	193.80
147	148	32-33-4	20-21	35	12.50	20.00	250.00
148	149	4-9	21	35	7.00	18.00	126.00
149	150	6-16	21	35	8.46	23.50	198.81
150	151	16-21	21	35	12.12	40.00	484.80
151	152	21-28	21	35	6.50	60.00	390.00
152	153	28-33	21	35	9.50	70.00	665.00
							2,275.00
153 to Titusville		33-34	21	35	5.60	100.00	560.00
							4,550.00
Titusville to M. P. 155		3	22	35	9.30	28.00	260.40
From M. P. to M. P. 155	156	Grant	22	35	12.12	16.50	200.00
156	157	"	22	35	12.12	16.50	200.00
157	158	"	22	35	12.12	16.50	200.00
158	159	"	22	35	12.12	16.50	200.00
159	160	"	22	35	12.12	31.60	164.83
160	161	"	22-23	35	12.12	8.25	100.00
161	162	"	23	35	12.12	16.50	200.00
162	163	"	23	35	12.12	10.00	121.20
163	164	"	23	35	12.12	13.50	163.62
164	165	" 24	23	35	12.12	23.00	278.76
165	166	" 24-25	23	35	12.12	30.00	263.60
166	167	25-36-31	23	35-36	12.12	26.00	315.12
167	168	31-6	23-24	36	11.00	36.10	397.10
168	169	6-7	24	36	12.12	50.00	606.00
169	170	7-18-17	24	36	12.12	30.00	363.60
170	171	17-20	24	36	12-12	40.50	490.86
171	172	20-21-28	24	36	12.12	66.40	804.76
							$16,018.95

10 BREVARD COUNTY.

		Sec.	T.	R.	Acres.	Valuation.	Amount.
Brought forward							$16,018.95
From M. P. to 172	173						
Cocoa		28-33	24	36	10.01	72.50	725.72
173	174	33-4	24-25	36	3.98	300.00	300.00
Cocoa 174	175						924.00
Rockledge					13.62	549.00	4,375.00
							7,477.38
175	176	4-9-10	24	36	13.01	190.00	2,471.90
176	177	10-15	25	36	13.15	72.00	946.80
177	178						
Coquina		15-14-23	35	36	14.63	65.10	952.41
178	179	23-26	25	36	11.84	36.00	426.24
179	180	26-35	25	36	12.60	36.00	453.60
180	181	35-36-1	25-26	36	12.12	22.40	271.48
181	182	1-12	26	36	12-12	25.60	310.72
							$35,654.20

11 TITUSVILLE BRANCH—BREVARD COUNTY.

		Sec.	T.	R.	Acres.	Valuation.	Amount.
From Titusville to M. P.	1	33	21	35	.84		$3,900.00
From M. P. to							
1	2	33-28	21	35	5.14		225.00
					452		275.00
2	3	28-29-20	21	35	9.09	116.00	1,054.44
3	4	20-17	21	35	5.05	346.00	1,747.30
4	5	17-18	21	35	8.50	44.10	374.85
5	6	18-7	21	35	8.16	52.10	425.13
6	7	7-6-1	21	34-35	9.65	33.70	325.20
7	8	1-36	21-20	34	17.95	37.60	674.92
8	9	38-42	20	34	24.24	10.00	242.40
9	10	42	20	34	24.24	10.00	242.40
10	11	42-41	20	34	24.24	10.00	242.40
11	12	41	20	34	24.24	10.00	242.40
12	13	41-9	20	34	18.00	10.00	180.00
13	14	9-4-5	20	34	12.12	10.00	121.20
14	15	5	20	34	12.12	10.00	121.20
							$10,393.84

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PART OF BREVARD COUNTY.

From M. P.	to M. P.	Sec.	T.	R.	Acres.	Valuation.	Amount.
182	183	12-13	26	36	12.39	40.00	$495.60
		13-18			4.00	37.50	150.00
183	184	19	26	36-37	3.10	15.00	46.50
					5.02	50.00	251.00
					8.00	50.00	400.00
184	185	19-30	26	37	4.12 No deed	50.00	206.00
					5.58	30.00	167.40
185	186	30-31	26	37	6.54 "	30.00	196.20
		31-32			3.00	30.00	90.00
186	187	5	26-27	37	7.00	30.00	210.00
					2.12 "	50.00	106.00
					5.40	50.00	270.00
187	188	5-8	27	37	6.72 "	50.00	336.00
188	189	8-9	27	37	21.69	50.00	1,084.50
189	190	9-16	27	37	9.56	240.00	2,294.40
					3.03	240.00	727.20
190	191	16-21	27	37	6.06	100.00	606.00
					2.41	100.00	241.00
191	192	21-28	27	37	9.71	25.00	242.75
					5.28	25.00	132.00
192	193	28-34	27	37	6.84 "	25.00	171.00
					2.00	25.00	50.00
193	194	34-3	27-28	37	4.00	25.00	100.00
					24.00	50.00	1,200.00
		3-2			4.00	400.00	1,600.00
194	195	11	28	37	2.52	75.00	189.00
					10.62	75.00	796.50
195	196	11-14	28	37	1.50	33.00	49.50
196	197	14-13	28	"	12.12	33.00	400.00
197	198	24	28	37	12.12	60.00	727.20
		24-25			4.00	60.00	240.00
198	199	30	28	37-38	.50	50.00	25.00
					.80	10.00	80.00
					3.44	6.00	20.64
199	200	30-31	28	38	8.68	50.00	434.00
					3.30	50.00	165.00
200	201	31-6	28-29	38	5.32	30.00	159.60
		6-5			1.65 No deed	30.00	49.50
201	202	8	29	38	1.70	30.00	51.00
					6.06	25.00	151.50
					8.15	25.00	203.75
202	203	8-17	29	38	3.97	50.00	198.50
		17-16			9.09	50.00	454.50
203	204	21	29	38	3.03	25.00	75.75
					7.06	25.00	176.50
204	205	21-28	29	38	1.60	100.00	160.00
205	206	28	29	38	13.33 1/3	90.00	1,200.00
206	207	34	29	38	12.00	50.00	600.00
207	208	3	30	38	12.00	50.00	600.00
208	209	11	30	38	8.57	70.00	599.90
					3.00	50.00	150.00
209	210	11-14	30	38	8.30	37.50	311.25

13

					3.03 No deed	37.50	113.62
210	211	14-23	30	38	9.09	25.00	227.25
					3.03	25.00	75.75
		23			2.14	25.00	53.50
211	212	Grant	30	38	9.98 "	25.00	249.50
							$20,361.76

(Endorsed) Filed in evidence, marked Petitioner's Exhibit 2. January 15, 1912.

EXHIBIT 3.

[Filed in evidence marked Petitioner's Exhibit 3 Jany 15, 1912.]

Birmingham, Ala., July 13th, 1907.

Alexander St. Clair Abrams, Esq.,
Jacksonville, Fla.

Dear Sir:—

As directed by yourself, we have made an examination of the Florida East Coast Railway main line and all branches. The following reports and estimates of cost are based upon the examination of the road, upon the verbal reports of various officers and upon the records of the several departments. It is impossible, of course, that we could verify by measurements the various and multitudinous details, but we have seen the work, sifted the evidence and figures submitted, and believe the result as shown in the accompanying report, to be a fair statement of the present value of the properties.

We find the physical condition of the road, buildings, bridges and equipment good and well maintained.

As directed by you, we have not considered or valued the right of way or any other land owned by the Railway Company.

We find values as follows:

Main Line Jacksonville to Homestead, 393.6 miles,		$ 5,527,600.82
This includes Jacksonville, St. Augustine & Miami Yards.		
Mayport Branch	24.8 miles	$ 254,439.61
East Palatka Branch	1.57	50,796.68
San Mateo Branch	2.70	20.270.39
Ormond	1.75	47,789.38
New Smyrna	26.80	207,595.49
Titusville	35.25	314,628.36
Palm Beach Branch	1.15	83,606.36
Cost of Main Line and Branches		$ 6,506,727.09
Engineering and Supervision 3½ per cent on cost		227,735.44
Legal Expense, 1/3 of Eng'rg. & Supervision		75,911.80
		$ 6,810.374.33
Equipment		2,556,087.09
Buildings		928.962.02
Machinery & Tools		113.061.82
Stock on hand		756,820.85
		$ 4,354,931.72
Total Main Line and Branches		$ 6,810,384.33
Total Equipment, Buildings, etc.		4,354,931.72
Total Cost		$11,165,306.05

Herewith submitted are detailed statements, showing cost of the Main Line, each Branch Line, Equipment, Buildings, Machinery, Tools, and Stock on hand.

Yours truly,

Main Line. 393.6 Miles.

Cleaning and Grubbing.

393.6—1.6 miles from river crossing,
392 miles at $300.00 per mile
Miles 392 × $300.00 ..... $ 117,600.00

Cost Cleaning and Grubbing for Main Line.

$ 117,600.00

Main Line

Cost of Grading Main Line, Siding and Spans.

(A)	Homestead to Miami 27.6 miles, taken from Cos. books. Miami Yards omitted.	$ 108,336.00
(B)	Miami to West Palm Beach 67.2 miles	100,137.00
(C)	West Palm Beach to Ft. Pierce 57½ miles	221,756.00
(D)	Ft. Pierce to Titusville 87.1 miles	283,444.00
(E)	Titusville to St. Augustine 118 miles	296,164.00
(F)	St. Augustine to Jacksonville, 36.4 miles	74,858.00
	Total cost grading main line	$1,084,695.00
	Spurs (locksill to Homestead) per mile	$ 2,753.00

Main Line.

No. cubic yards in each Division.

27.6 miles.

			Cubic yards.
(A)	Not estimated in cubic yards.		
(B)	67.2 miles		
	Main line	444912 c. yds.	
	Sidings and spurs	55776 "	500688
		500688	
(C)	57½ miles.		
	Main line	967837	
	Sidings and spurs	140951	1108788
		1108788	
(D)	87½ miles.		
	Main line	1254855	
	Sidings and spurs	162366	1417221
		1417221	
(E)	118 miles.		
	Main line	1310661	
		170159	1480820
		1480820	
	St. Augustine to Jacksonville, 36.4 miles.		
	Main line	314746	
	Sidings & spurs	59547	374293
		374293	4881810.00

Cu. yd. average per mile 13338 c. yds.

Main Line Trestles.

Jacksonville to Homestead, 393.8 miles.

Framed trestle lineal ft. 16505 at $6.01 per ft.		$ 99,195.05
No. trestles, 209 × $126.65 for Bulkhds.		26,469.85
		$125,664.90
Capped Trestle, Main Line.		
Lin. ft. 141 at $4.77		$ 672.57
No. trestles 5 × $126.65 Blkhds.		633.25
		$ 1,305.82
Homestead extension has 3 packed cords for stringers at a higher price.		
Lin. ft. 4419 × $5 125/1000		$ 22,647.37
No. trestles, 13 × $126.65 Blkhds.		1,646.45
		$ 24,293.82
Logged Walls.		
Lin. ft. 236 × $6.71		$ 1,583.56
Total cost trestles main line		$152,848.10
Average cost per mile	$388.28	
Total length trestles, lin. ft.	21301	
Average per lin. ft.	$ 54.12	

Culverts.

Main Line, Jacksonville to Homestead, 393.6 Miles.

Lineal ft. Culverts	1679.8 ft.	
Culverts, 157.		
Cost per lin. ft.	$7.49	
1679.8 × $7.49		$ 12,581.70
Average price per mile $ 4.26 lin. ft.		
Average cost per m. $31.90		

Cost Trestles.

Cost, main line (see above)	$152,848.10
Culverts, above	12,581.70
	$165,429.80

Main Line and Branches. 487.62 Miles.

Cattle Guards.

400 at $55.00		$ 22,000.00
Cost,	$22,000.00	

Main Line. Jacksonville to Homestead, 393.6 Miles.

Draw Bridges.

Fixed Steel Spans.

IA	Trestle Approaches. St. John's River, Jacksonville			$ 333,000.00
	2830 over all			
	Trestle 1338 steel		1492 trestle	
	Fixed span and draw.			
37-B.	St. Augustine)			
	336′ girders)			$ 22,282.84
53-A.	Deep Creek.			
	321 ft. trestle	$1926.00		
	36′ steel girders	715.00		$ 2,641.00
102-A.	Tomoka.			
	267 ft. trestle	$1602.00		
	25 ft. truss	290.00		$ 1,892.00
120-A.	Spruce Creek.			
	927 ft. trestle	$5562.00		
	35 ft. truss	290.00		
	384 piles protected by pipes	1384.00		$ 7,236.00
213-A.	Sebastian.			
	1697 trestle	$10032.00		
	25 feet draw	900.00		$ 10,932.00
260-B.	108 ft. long			654.00
261-B.	St. Lucie R.			
	1287 ft. steel girders and draw			$ 77,210.00
283-A.	Lupiten River.			
	1175 ft. trestle	$7050.00		
	97′ steel draw	5965.00		
	393 piped piles	1386.00		$ 14,401.00
342-A.	New River.			
	241 ft. trestle	$1446.00		
	25 ft. draw	$900.00		$ 2,346.00
	Miami River.			
	108 ft. trestle	$ 651.00		
	draw, 127′ long	6200.00		$ 6,851.00
	Total Cost Bridge & Trestle Approaches.....			$ 479,445.84

Cross Ties, Main Line.

Whole system, 719 sets switch ties, total,.....71,900 ft. track.
428 " " main line.....42,800 " "

Trestles.

Trestles, main line	21301 ft.	
Culverts " "	1680 ft.	
Steel bridges and trestle approaches	8492 ft.	
	31473	31,473 ft.
		74,273 ft.

Feet, 74,273, equals 14.07 miles.

From Jacksonville to Homestead,	393.6	miles
Less S. trestles & bridges	14.07	"
miles of ties	379.53	

Ties, 2816 per m. X 379.53 miles, equals ties on main line, 1,068,756.48.

20 per ct. at 40 cts.)
80 " " " 50 ") equals 48 cts. per tie.

Ties, 1068756 X 48 cts, Ties.....$ 513,003.00

80 per ct. are hauled in from foreign roads and received at Jacksonville and delivered on road.
2) 394
197 miles average haul.

12 ties per ton at 3 mills per ton will make haulage
197 or 200 miles, 5 cts. per tie.

Distribution is ½ cent per tie. Therefore on 80 per ct. of ties are chargeable with 5½ cts. for haulage and delivery.

1068756 ties total
855005 equals 80 per ct. at 5½ cts.

$ 47,025.27.....Haulage and Delivery.

No. ties, 1068756 at 48 cts. equals.....$	513,003.00
Haulage and delivery of 855005 ties at 5½ cts.....	47,025.00
$	560,028.00

Switch Ties, 428 sets on Main Line.

428 sets at $58.50 per set .....$	25,038.00
428 sets at 52 ties per set.	
22258 haulage & delivery, 5½ cts. per tie.....$	1,224.00
$	586,290.00

Total Cost Ties, Switch Ties, Haulage and Delivery
$ 586,290.00

Main Line.

Cost of Rails in Place, From Jacksonville to Homestead, 393.6 Miles.

Jacksonville to St. Augustine, 36.4 miles.
Rail 90 lbs. per yard, equals per miles, 141.43 tons.
36.4 miles X 141.43 tons, equals 5148.00

St. Augustine to Homestead, 357.2 miles, equals rail
70 lb. per yard, equals per mile, 110 tons.
110 tons X 357.2 miles, equals 39292.00

Total sidings and spurs, 57.41 miles laid with 60 lbs. steel.
60 lbs. steel per mile, equals 94.3 tons,
57.41 miles X 94.3 tons equals 5413.76

Total tons main line	44440.05
Sidings and spurs, tons	5413.76
Tons	49853.81

Loaded on cars .40 cts. distributing 40 cts.)
Average haul 196 miles at 3/10 ct. per ton)
per mile, equals 59 cts. per ton.)
Price, $30.03, equals) Per ton $31.44

Loading on cars	40 cts.
Distributing	40
Average haul 196 miles	
Cost haul 3/10 cts. per ton mile.	
Per ton per m. equals 196 miles, equals	59 cts.
Loading & haul	1.39
Cost of rail	30.05
	31.44

49853.81 tons X $31.44 equals $1,567,403.78

Cost of Rails $1,567,403.78

Track in Sidings and Spurs on Main Line.

		Miles.	Weight rail.
	Main line		60 lbs.
(A)	Homestead to Miami, sidings and spurs	3.65	"
(B)	Miami to West Palm Beach, sidings & spurs...	9.33	"
(C)	W. Palm Beach to Ft. Pierce	9.40	"
(D)	Ft. Pierce to Titusville	11.90	"
(E)	Titusville to St. Augustine	16.15	"
(F)	St. Augustine to Jacksonville	6.98	"
	Miles	57.41	60 lbs.

Main Line and Sidings.

Rail Fastenings.

186 Miles.

352 prs. angle bars at $1.12 equals	$ 394.24
8 kegs bolts at $5.00	40.00
33 kegs spikes at $4.00	132.00
Per mile	$ 566.24

186 miles X $566.24 equals $105,320.64

207.6 miles Main Line
57.41 " Sidings
4.30 " Jacksonville Yard
8.25 " St. Augustine Yard
7.01 " Miami Yard

284.57 miles

352 prs. angle bars at 67	$ 235.84
33 kegs spikes at $4.00	132.00
8 kegs bolts at $5.00	40.00
	$ 407.84

Miles 284.57 X $407.84, equals ..... $ 116,059.02
105,320.64

$ 221,379.66

Cost ..... $ 221,379.66

Frogs & Switches & Stands.

Main Line & Yards.

122 Frogs, 60# Rail,				
Frogs rigid,	$ 21.75	)		
Switches,	22.50	:—	56.75,	$6,923.50,
Stands,	12.50	)		
64 Frogs, 60# Rail,				
Frogs spring,	$ 24.00	)		
Switches,	22.50	:—	59.00,	3,776.00,
Stands,	12.50	)		
384 Frogs, 70# Rail,				
Frogs,	$ 40.75	)		
Switches,	28.90	:—	82.15,	31,546.00,
Stands,	12.50	)		
33 Frogs, 90# Rail,				
Frogs,	$ 49.25	)		
Switches,	33.95	:—	95.70,	3,158.00,
Stands,	12.50	)		
			Total,	$ 45,403.50

Main Line, 393.60 Miles
Track Laying:
Sidings and Spurs 57.41

451.01

451 miles X $500 per mile, equal ..... $ 225,500.00

Surfacing and putting in condition $150.00 per m.
451 miles X $150.00 ..... $ 67,650.00

$ 293,150.00

Total Cost Laying and Surfacing
Track on 393.6 Miles Main Line
and 57.41 Side Track
$ 293,150.00

Main Line. 393.6 Miles.

Jacksonville to Homestead.

Ballasting.

Ballasted from Jacksonville to St. Augustine, 36 miles.

2059 cu. yds. per mile.
2059 X 35 equals 72065 cu. yds.
Cost of Rock 0.60 cts.
Putting in place 42 cts.
Haul 380 m. 1.086

$2.106 cost per cu. yd.

Cu. yds. 72065 X 2.106 equal $151,768.89

Ballasted from Miami to Ft. Lauderdale,
25 miles and 776 cu. yds. per mile.
Cu. Yds. 776 X 25 miles, equal 19,400 cu. yds.
Cost rock, 60 cts.
Putting in place 30 cts.
Haul .078 cts.

$0.978

Cu. yds. 19400 X $0.978 equal ..... $ 18,973.20
$ 151,768.89

$ 170,742.09

Cost ..... $ 170,742.09

Road Crossings.

Main Line, Jacksonville to Homestead, 393.6 Miles.

518 Road Crossings at $27.00 ..... $ 13,986.00

Cost ..... $ 13,986.00

Main Line and All Branches.....487.62 Miles.

Fencing.

362.58 miles single fence at $258.00 per mile.
362.58 X 258.00 .....$ 93,545.64
Cost.....$ 93,545.64

Whole Main Line and Branches.....487.62 Miles.

670 Crossing Signs at $2.50	$ 1,675.00
1340 Crossing W. Posts at $1.15	1,541.00
328 Sta. W. Posts at $1.15	377.20
487 Mile Posts at $1.50	730.50
1719 Clearance Posts at 40c	687.60
	$ 5,011.30

Cost.....$ 5,011.30

Chargeable to Whole Line.

Cost of Wharves.

As Taken From the Records.

South Jacksonville	$ 5,430.00
Eau Gallie	5,340.00
Stuart	5,182.96
West Jupiter	1,422.16
West Palm Beach	7,005.12
Miami	38,431.42
May Port	99,614.99
Biscayne Bay Dredging	353,998.25
	$ 516,424.90

Main Line.

Main Yards.

South Jacksonville—Grading.

Yard of 22645 ft. of track, equal 4.3 miles.
Grading 4.3 miles at 10853 cu. yds. per mile equal 46668 cu. yds. — 14′ and the 3′ fill Slope 1½ to 1.

46668 cu. yds. at 20 cts. equal .....$ 9,333.60.

Grading Cost .....$ 9,333.60

Cross Ties.

24 sets switch ties at $58.50 per set, equal	$ 1,404.00
24 sets ties occupy 2400 ft., equal .45 miles	
4.3 miles track, less .45 mile equal 3.85 miles	
3.85 miles at 2816 ties per mile equal 10841 ties.	
10841 ties at 48 cts. equal	$ 5,204.00
	$ 6,608.00

Cost.....$ 6,608.00

Rail, Main Road.

South Jacksonville.

4.3 miles 60# rail.
60# rail, equal 94.3 per m.
4.3 miles X 94.3 tons, equal.....405½ tons.
Cost.....$30.05 per ton.
Loading..... .40

$30.45 X 405.5 tons, equal.....$12,347.47

Steel Cost.....$12,347.47.

Track Laying.

4.3 miles track at $500.00 per m. equal	$ 2,150.00
Surfacing 4.3 miles at $150.00 equal	645.00
	$ 2,795.00

Cost.....$ 2,795.00

Jacksonville Yard.

Grading	$ 9,333.60
Cross Ties	6,608.00
Rail	12,347.47
Track Laying	2,795.00
	$ 31,084.07

Total Cost.....$ 31,084.07

Main Line—Main Yards—Grading.

St. Augustine Yard.

43555 ft. track, equal 8.25 miles.
8.25 miles at 10853 cu. yds. per m.
Fill 14′ wide
3′ high, slope 1½ to 1.
89537 cu. yds. at 20 cents equal .....$ 17,907.40

Cost.....$ 17,907.40.

Cross Ties.

67 sets switch ties at $58.50 ..... $ 3,919.50
67 sets ties occupy 6700 ft. equal 1.27 miles.
8.25 less 1.27 equal 6.98 miles.
6.98 miles X 2816 ties equal 19656 ties.
Cost..... 48 cts. 19656 X .494 cts. equal..... $ 9,719.00
Distributing 005
Haul 009

0.494

$ 3,919.50
9,719.00

Cost..... $ 13,638.50

Rail.

8.25 miles 60# rail, equal 94.3 tons per m.
8.25 m. X 94.3 tons, equal. .....777.97 tons.
Cost . . . . . $ 30.05
Loading 40
Distributing 40
Haul 078

$ 30.928

778 tons at $30.928 equal ..... $ 24,061.98

Cost..... $ 24,061.98

Track Laying.

8.25 miles at $500.00 per mile ..... $ 4,125.00
8.25 miles surfaced at $150.00 ..... 1,237.50

$ 5,362.50

Cost..... $ 5,362.50

Main Line.

St. Augustine Yards.

Grading . . . . . $ 17,907.40
Cross Ties 13,638.50
Rail 24,061.98
Track Laying 5,362.50

$ 60,970.38

Total Cost..... $ 60,970.38

Main Line—Main Yards.

Miami Yard.

Grading.

Length of siding and spurs.....37043 ft.
Track.....7.01 miles.
7.01 miles with 10853 cu. yds. per mile.
14' w.
3' l. Slope 1½ to 1.
76079 cu. yds. at 20 cts. ..... $ 15,215.00

Cost..... $ 15,215.00

Cross Ties.

28 sets switch ties at $58.50 equal ..... $ 1,638.00
28 sets equal 2800 ft. equal .53 miles.
7.01 miles less .53 equal 6.48 miles.
6.48 miles with 2816 ties per m. equal 18248 ties.
18248 ties X 57.6 cts. equal ..... $ 10,510.84

Cost	48 cts.	
Distributing	.005	$ 12,148.84
Haul	.091	
	0.576 cts.	
Cost	$ 12,148.84	

Rail.

7.01 miles 60# rail equal 94.3 tons per mile.
94.3 tons X 7.01 miles equal 661 tons.

Cost	$ 30.05
Loading	.40
Distributing	.40
Haul	1.098
	$31.948

661 tons X $13.948 equal ..... $ 21,117.62

Cost ..... $ 21,117.62

Track Laying.

7.01 miles at $500.00 per mile ..... $ 3,505.00
7.01 miles surfacing at $150.00 per m. 1,051.50
$ 4,556.50

Cost ..... $ 4,556.50

Main Line—Main Yard.

Miami Yard.

Grading	$ 15,215.90
Cross Ties	12,148.84
Rails	21,117.62
Track Laying	4,556.50
	$ 53,038.86

Total Cost ..... $ 53,038.86

Detail A—1.

Grading.

From Homestead to Miami.....27.44 Miles.

This includes grading for side tracks, taken from Company's books, also Clearing and Grubbing.

.....$108,336.05.....

Track Cutter Extensions.

Miami to Homestead.....27.83 Miles.
Miami Yard Omitted.
Cocoanut to Homestead included.

Length of sidings from frog to frog, 16124 ft. 150 ft. added to each siding for track to switch.

No. sidings and spurs, 22 X 150 = ...	3300
	16124
	19424
	150
	19274

Subtract 75 ft. each for two spurs = 150 ft.
Total length of track net sidings and spurs.....19274 ft.

equal	3.65 miles
Main line	27.83
Miles track	31.48

Detail A—2.

Grading.

Buena Vista to West Palm Beach Included.

Miami Main Line. 67.2 Miles.

Light:— 57.6 m. X 5573 cu. yds. per m. = 321005.
Medium:— 9.6 M. X 12907 cu. yds. = 123907 cu. yds.

321005
123907

444912 X 20 cts. = ... $ 88,982.40

Cost per m. $1328.00
Cu. yds. per m. 6640.00

Total length sidings frog to frog, 29466 ft.
Number of sidings, 25.
Total length spurs frog to end, 15358.
Number spurs, 9.
For grading of sidings add 75 ft. to each.
For grading of spurs, add 38 ft. to each.
Length of grading on siding, 31341 ft. = 5.43 miles.
Length of grading on spurs, 15695 ft. = 2.97 miles.

Total..... 8.40 miles.

8.40 miles at 6640 cu. yds. per m. = 55776 cu. yds.
55776 cu. yds. at 20 cts. = $11,155.20 spurs and sidings
88,982.40 main line.

Total Grading ..$100,137.60

Track, Switches and Frogs.

Main line and siding, Miami to Private Car Spur, Palm Beach.
Miami Yard not included. Palm Beach Yard not included.

Main Line.....67.20 Miles.

Length sidings, frog to frog,	29466 ft.	
Add 150 ft. for 25 siding	3750 ft.	
Length spur frog to end.	15358 ft.	
Add 75 ft. for 9 spurs	675 ft.	
Total track, spurs & Sidings	49249 ft. =	9.33 miles.
		67.20 miles.
Total Miles, Main Line		76.53 miles.

	Frogs	Switches
Spur lines & sidings		
Switches & frogs in sidings	50	50
" " " " spurs	9	9
	59	59

Cattle Guards. 00.00.

Detail A—3.

West Palm Beach to Ft. Pierce, 57½ Miles.

Grading.

Light, 3.7 miles, 5573 cu. yds. per mile	20620 cu. yds.
Medium, 20.7 miles, 12907 cu. yds.	267175 "
Heavy, 19.2 miles, 18773 cu. yds.	360342
Extra, 135, 23000 cu. yds.	319700
Main Line	967837 Cubic yards.

At 20 cts. per yd. $193,567.40
Average cu. yds. per mile.....16832 cu. yds.

Length of sidings omitting West Palm Beach & Stuart yards.
Beginning with siding at Lake Worth and ending at Pineapple siding.
Beginning at Warrior, and ending at Aberdeen.

Length of sidings and spurs, frog to frog, 30729 ft.
" " grading " ft. 33354 = 6.32 m.
Average cu. yds. per mile, 16832 cu. yds.
6.32 miles = 105941 cu. yds.
At 20 cts. per yd. ..... $ 21,188.00

Total grading from West Palm Beach to Ft. Pierce,
Stuart and West Palm Beach yards omitted.

Main line	967837 cu. yds.
Sidings	105941 cu. yds.
	107778 cu yds.

At 20 cts. per yd. equal $214,755.60
Per mile..... $3,735.00.
Average cu. yds. per mile, total.....18535.

West Palm Beach to Fort Pierce.

Stuart Sidings not before included with Main Line.

Sidings frog to frog	2564 ft.	
3 sidings X 75 added	225	
	2789	
Spurs frog to end.		
2 spurs, length	2105 ft.	
2 spurs add 75 ft.	75	
	2180 ft.	
Length sidings	2789	
Length spurs	2180	
	4969 = 0.94 miles.	
Average grading per mile	16832	

0.94 miles, 15822 cu. yds.
$ 3164.40

West Palm Beach to Ft. Pierce.

Ft. Pierce Sidings and spurs not before included in Main Line.

4 sidings from frog to frog	4561 ft.
Add 75' for each siding	300
	4861
3 Spurs frog to end	1552
Add 37 ft. for 3 spurs each	111
	1663

Y	1654 ft.	Sidings	4861
Less	150 '	Spurs	1663
	1504 ft. long.	"Y"	1504
			6028

6028 = 1.14 miles. Average main line, 16832 = 1 mile.
1.14 miles = 19188 Cu. yds. at 20 cts. per yd. = ...$ 3,837.60
Cost.....$ 3,837.60

West Palm Beach to Ft. Pierce (Continued).

Grading.

From West Palm Beach to Ft. Pierce including Stuart and Ft. Pierce Yard.

No. (1)	Page C'	$214,775.00
No. (2)	" 1C"	3,164.00
No. (3)	" 2C"	3,837.00
		$221,756.00

Track.

West Palm Beach to Ft. Pierce, Main Line.....57½ Miles.

Lake Worth to Pine Apple) Beginning at Wawa, ending) at Aberdeen.) Sidings from frog to frog 30729 ft.

For 29 sidings, add 150 ft. for length track	4350 "
For 6 Spurs add 75 ft. for length track	450 "
Stuart sidings, 3 = length frog to frog	2564 "
" Spurs 2 = " " " end	2105 "
Add 150 ft. for 3 sidings =	450
Add. 75 ft. for 2 Spurs =	150
Fort Pierce Sidings, 4 length frog to frog	4561
" " Spurs 3 length frog to end	1552
" " "Y" 1 length " "	1650
Add 150 ft. for 4 sidings	600
Add 75 ft. for 3 spurs	225
Add 225 ft. for 1 "Y"	225
	49615 feet.

49615 ft. = 9.40 miles.
Main Line ..... 57.50 miles
Sidings, etc. ..... 9.40 miles
66.90 miles.

Detail A—4.

Ft. Pierce to Titusville .....87.1 miles.

Grading, Main Line.

Light..... 5573 cu. yds. per m. 2½ m. = ...	13932	cu. yds.
Medium..12907 cu. yds. = ...53.3 m. = ...	713757	"
Heavy....18773 cu. yds. = ...14.6 m. = ...	274086	"
Extra heavy 23000 cu. yds.... 3.8 m. = ...	87400	"
Total	1089175	"
Average per mile is 14407 =		
Add to the above estimate 11½ miles omitted as not personally examined, at an average of 14407 = ...	165680	"
Total main line 87.1 miles.	1254855	cu. yds.

Average per mile .....14407 cu. yds.

Grading, sidings, add to each s. 75 ft.
add to each spur 38 ft.
38 sidings .....46358 ft. frog to frog
Add end 2850 " each and 75 ft.

49208

49208 ft. = 9.32 miles
9.32 m. X 14407 cu. yds. = ...134273 cu. yds.

Grading spurs, 13, = length 9836 ft. frog to end
Add 38 ft. for each spur.
13 X 38 = 494 = 9836 ft.
494

10330 ft. = ...1.95 miles.
Average per mile, 14407 X 1.95 = ... 28093 cu. yds.

No. (1)	1254855
No. (2)	134273
No. (3)	28093
Total grading	1417221 cu. yds.
	20 cts. per yd.

$283,444.20.....cost of main line, sidings & spurs.
87.10 miles.

Track.

Main Line .....87.1 Miles.

Sidings, 38 length frog to frog = ...	46358	ft.
Add 150′ to each siding equal to distance from frog to switch at each end 38 X 150 = ...	5700	"
Spurs, 13, length frog to end	9836	"
Add 75 ft. to each for switch to frog 13 X 75 = ...	975	"
Length sidings and spurs	62869	"
Equal 11.90 miles.		
Total track, main line	87.1	miles
Sidings and spurs	11.90	miles
Total miles	99.00	miles

Detail A—5.

Titusville to St. Augustine. 118 Miles.

Grading.

Titusville to
Oak Hill.....17.52 miles × 18773 cu. yds. =
Heavy, 16 ft. roadbed = ... 328902 C.y.
31.1 miles light, 14′ rd. bed 6648 c. yds. per m. = ... 206753 "
65.24 miles medium, 10853 per m. = ... 708050 "
4.28 miles heavy, 15644 c. yds. per m. = ... 66956 "

Total, 118 miles .....1310661 C.y.
118 miles, per mile average.....11107 cu. yds.

47 sidings, total length from frog to frog, 54878 ft.
Add 75 ft. to each siding for grading, 47 × 75 = 3525 ft.
54878 ft. + 3525 = 58403 ft. length of grade of sidings, = 11.06 m.
Average per mile .....11107 cu. yds.
Miles 11.06 × 11107 cu. yds. = total .....122843 cu. yds.

21 spurs, total length from frog to end, 21757 ft.
Add 37 ft. to each spur for grading, 21 × 37 = 777 ft.
21757 + 777 = 22534 ft. length of grade of spurs = 4.26 m.
Average per mile, 11107
Miles 4.26 × 11107 cu. yds. = Total ..... 47316 cu. yds.

No. (1) Main Line .....cu. yds.	1310661	No. (1)
No. (2) Sidings "	122843	" (2)
No. (3) Spurs "	47316	" (3)
Average per m. cu. yds. 12549.3	1480820	cu. yds.
At 20 cts. per cu. yd.	20	cts.
	$296,164.00	

Average per mile 2509.87

Track.

Main Line, 118 Miles.

Sidings, 47 length frog to frog ..... 54878 ft.
Add 150 ft. to each siding = to distance from frog to switch at each end, 47 × 150 = ... 7050 "
Spurs, 21, length frog to end ..... 21757 "
Add 75 ft. to each for distance switch to frog, 21 × 75 ..... 1575 "

85260 "

Equal miles .....16.15.

Total track main line .....118 miles
Sidings and spurs ..... 16.15 miles

Total .....134.15 miles

Detail A—6.

Main Line, Jacksonville to St. Augustine.

South Jacksonville to St. Augustine .....35.2 Miles.

16 miles light, 14′ roadbed.
Miles 16 × 6648 cu. yds. = ...106368 cu. yds.
19.2 m. × 10853 cu. yds. = ...208377.6

Cu. yds. 314745.6
Main line, 314746 × 20 cts. = ...$ 62,949.00
Average cu. yds. per m. 8941.6

Sidings 13, lin. ft. 20788 from frog to frog
Add 75 ft. for grading to each siding 13 × 75 = 975
20788 + 975 = 21763 ft. = 4.12 miles.
Cu. yds. per m. 8941.6 × 4.12
36836.9 cu. yds. at 20 cts. = ...$ 7,367.30

Spurs 8, = lin. ft. 7573 from frog to end
Add 37 ft. to each spur for grading 37 × 8 = 296.
7573 + 296 = 7869 = 1.49 m. .....$ 2,664.40

$ 72,980.70

M. 1.49 × 8941 cu. yds. = 13322 × 20 cts. = Total
Average per mile .....8941 cu. yds.

S. 3, = lin. ft. 5151.
Add 375 for grading 375 + 5151 = 5526 =
1.05 m. × 8941 cu. yds. = ...cu. yds. 9388.05
Cost, 9388.05 at 20 cts.
$1877.60
72980.70

$74858.30
Main line cu. yds. 314746
Sidings and Spurs 59547

374293 cu. yds.

Main Line Track.

Jacksonville to St. Augustine .....36.4 miles. 36.40

Sidings, 13, lin. ft. 20788 from frog to frog.
Add 150′ ft. for distance frog to switch.
150 × 13 = 1950 + 20788 ft. = 22738 = 4.31 miles. 4.31

Spurs, 8 lin. ft. 7573 from frog to end,
Add 75 ft. each spur. 75 × 8 = 600 ft.
600 + 7573 = 8173 ft.
Ft. 8173 = 1.55 miles 1.55

"Y"s 3, lin. ft. 5151.
Add 750 for track = 5901 = 1.12 ..... 1.12
Main Line 36.40
Sidings, Spurs, etc. 6.98

No. 1.

Terminus South Jacksonville—1.2 Miles from Jacksonville.

Length of Line, 24.8 Miles.

Mayport Branch.

F. E. C. Railway.

Clearing and Grubbing	$ 7,140.00
Grading	73,512.00
Trestles and Culverts	8,713.76
Bridges	7,316.00
Cross Ties	34,846.01
Steel Rail, Siding Included	87,978.00
Fastenings	12,320.84
Switches and Frogs	2,065.00
Track Laying	19,630.00
Road Crossings	918.00
	$254,439.61

No. 2.

Terminus East Palatka—61½ Miles from Jacksonville.

Length of Line, 1.57 Miles.

Palatka Branch.

F. E. C. Railway.

Clearing and Grubbing	$ 240.00
Grading	1,000.00
Trestles and Culverts	17,663.30
Bridges	24,268.80
Cross Ties	1,641.00
Steel Rail, Siding Included	3,828.78
Fastenings	640.30
Switches and Frogs	590.00
Track Laying	897.50
Road Crossing	27.00
	$50,796.68

No. 3.

Terminus San Mateo Junction. 62.8 Miles from Jacksonville.

Length of Line, 2.7 Miles.

San Mateo Branch.

F. E. C. Railway.

Clearing and Grubbing	$ 810.00
Grading	2,700.00
Trestles and Culverts	1,822.35
Bridges	00.00
Cross Ties	3,926.10
Steel Rail, Siding Included	7,902.78
Fastenings	1,101.16
Switches and Frogs	118.00
Track Laying	1,755.00
Road Crossings	135.00
	$ 20,270.39

No. 4.

Terminus Ormond, 104.1 Miles from Jacksonville.

Length of Line, 1.75 Miles.

Ormond Branch.

F. E. C. Railway.

Clearing and Grubbing	$
Grading	1,800.00
Trestles and Culverts	30,848.59
Bridges	5,200.00
Cross Ties	2,033.50
Steel Rail, Siding Included	5,525.98
Fastenings	770.81
Switches and Frogs	295.00
Track Laying	1,126.50
Road Crossings	189.00
	$ 47,789.38

No. 5.

Terminus New Smyrna. 124.6 Miles from Jacksonville.

Length of Line, 26.8 Miles.

New Smyrna and Orange City Branch.

F. E. C. Railway.

Clearing and Grubbing	$ 8,040.00
Grading	50,373.80
Trestles and Culverts	10,799.54
Bridges	0.00
Cross Ties	32,943.10
Steel Rail, Siding Included	71,695.71
Fastenings	11,904.84
Switches and Frogs	1,650.00
Track Laying	18,973.50
Road Crossings	1,215.00
	$207,595.49

No. 6.

Terminus Titusville. 154.4 Miles from Jacksonville.

Length of Line, 35¼ Miles.

Titusville and Sanford Division.

F. E. C. Railway.

Clearing and Grubbing	$ 10,575.00
Grading	80,811.00
Trestles and Culverts	21,477.43
Bridges	0.00
Cross Ties	52,096.00
Steel Rail, Siding Included	112,470.86
Fastenings	15,506.07
Switches and Frogs	1,062.00
Track Laying	19,010.00
Road Crossings	1,620.00
	$314,628.36

No. 7.

Terminus West Palm Beach. 299 Miles from Jacksonville.

Length of Line, 1.15 Miles.

Palm Beach Branch.

F. E. C. Railway.

Clearing and Grubbing	$
Grading	3,920.00
Trestles and Culverts	45,477.99
Bridges	9,733.15
Cross Ties	6,561.00
Steel Rail, Siding Included	12,603.25
Fastenings	1,741.47
Switches and Frogs	908.00
Track Laying	2,661.50
	$ 83,606.36

Estimate of Cost of Main Line.

F. E. C. Railway from Jacksonville to Homestead.

Clearing and Grubbing	$ 117,600.00
Grading	1,084,695.00
Trestles and Culverts	165,429.80
Cattle Guards	22,000.00
Bridges	479,445.84
Cross Ties	586,290.00
Steel Rail, Siding Included	1,567,403.78
Fastenings	221,379.66
Switches and Frogs	45,403.50
Track Laying	293,150.00
Ballasting	170,742.09
Road Crossings	13,986.00
Fencing	93,545.64
Crossing Signs and Whistling Posts	5,011.30
Wharves	516,424.90
East Jacksonville Yard	31,084.07
St. Augustine Yard	60,070.38
Miami Yard	53,038.86
	$5,527,600.82

— —

Mayport Branch .....24.8 Miles.

Clearing and Grubbing.

24.8, less 1 miles for marsh.
23.8 × $300 per mile $7,140.00

Cost, Clearing and Grubbing $7,140.00

East Jacksonville, 1.2 miles from Jacksonville.

Grading.

Medium with 16 ft. roadbed.
Average 12906 cu. yds. per mile.
12906 × 24.8 miles.....320069 cu. yds.

cu. yds. 320069 at 20 cts. .....$ 64,013.80

Sidings 6 lin. ft. from frog to frog.

4952, add 75′ for each siding for grading
6 × 75 equal 450 × 4952, equal 5402′ equal 1.02 miles.
12906 cu. yd. × 1.02 m. equal 13164.12
13164 $ 2,632.80

Spurs 9 lin. ft. from frog to end.

10311, add 37′ for each spur for grading
9 × 37 equal 333 + 10311 equal 10644 equal 2.02 miles.
cu. yds. 12906 × 2.02 m. 26070 cu. yds.
26070 cu. yds. at 20 cts. .....$ 5,214.00

Ys = 2 = lin. ft. 3064 = add 150
for each 150 × 2 = 300 + 3064 = 3364 ft. = .064 m.
cu. yds. 12906 × .064 m. = 8260 cu. yds.
8260 cu. yds. at 20 cts. .....$ 1,652.00

Cost .....$ 73,512.00

Trestles.

Framed trestles lin. ft. 626 × 6.01 .....$ 3,762.26
No. trestles 9 × 126.65 .....$ 1,139.85

Capped trestle lin. ft. 295 × $4.77 .....$ 1,407.15
No. trestles, 8 × $126.65 abt. .....$ 1,013.20

Log trestles, lin. ft. 24 × $6.71 .....$ 161.04
No. of trestles, 1. Total cost trestles .....

$ 7,483.50

Culverts.

Culverts, lin. ft. 274 × $7.49
No. culverts, 23. Total cost culverts .....$ 1,230.26

Total cost trestles .....$ 7,483.50
Total cost culverts 1,230.26

$ 8,713.76

Mayport Branch (Continued)

Bridge Spans and Approaches.

(7A)	Trestle 166′ = 25′ truss	$996.00 290.00 =		$ 1,286.00
(16A)	Trestle 304′ 25′ truss	$1,824.00 290.00 =		$ 2,114.00
(16B)	Trestle 317′ 25′ truss	$1,902.00 290.00 =		$ 2,192.00
(16C)	Trestles 239′ 25′ truss	$1,434.00 290.00 =		$ 1,724.00
				$ 7,316.00
	Cost		$7,316.00	

Cross Ties.

35 sets switch ties covering 3500 ft. track.

35 sets at $58.50 per set ..... $ 2,047.50
24.8 miles of ties less 3500 ft. of switch ties
and 845 ft. of trestle = 4345 ft. = 8/10 of one mile.
24.8 — .8 = 24 miles.
miles 24 × 2816 = per m. =
67584 ties at 48.53 cts. ..... $ 32,798.51

Cost of all ties $34,846.01

Track.

Main line ..... 24.80 miles
6 sidings, lin. ft. frog to frog 4952,
Add 150 ft. for each siding for distance
from frogs to switches
6 × 150 = 900 + 4952 = 5852 ft. 5852 ft. = 1.11 ..... 1.11 "

Spurs 9 on grading and 10 on wharves.
on grading, 10311 ft. on wharves 7776 ft.
= 18087 ft. Add 75 ft. to each spur for
track between switch and frog 9 + 10 = 19
19 × 75 ft. = 1425 ft. + 18087 =
19512 = miles 3.69 ..... 3.69 "

Ys, 2 = length 3064 ft. Add 75 ft. for
each open = 150. 3064 + 150 = 3214 ft. = ... 0.61 "

30.21 miles

Siding, spurs and Y, 5.41 miles
Main line 24.8

30.21 miles

30.21 miles of 60# steel = 94.29 tons per mile.
30.21 × 94.29 = 2848.50 tons.
40 cts. for grading
40 " for distribution
036 " for haulage 12 miles, average haul.
$30.05 Price per ton.

$30.886

2848.50 × 30.886 ..... $ 87,978.00

Cost Steel Rail Main Line and Sidings and Spurs
$ 87,978.00

Mayport Branch (Continued).

Fastenings.

Fastenings per m. $407.84
Main line 24.8 miles
Sidings 5.41

30.21

$407.84 × 30.21 = ...$ 12,320.84

Cost $12,320.84

Switches.

35 sets switches
35 sets stands
35 sets frogs.

35 sets of switches, stands and frogs at $59.00.....$ 2,065.00

Cost of Switches & Frogs $2,065.00

Track Laying.

Main line .....24.8 miles
Sidings and spurs 2.41

30.02 miles

30.2 miles at $500.00 per m. 30.2 × 500 = ...$ 15,100.00
Surfacing, 30.2 × $150.00 = ... 4,530.00

$ 19,630.00

Cost of Track Laying $19,630.00

Road Crossings.

34 road crossings at $27.00 equal .....$ 918.00

Cost $918.00

East Palatka, 61½ Miles from Jacksonville.

Palatka Spur, 1.57 Miles.

Clearing and Grubbing.

Cost $240.00

Grading.

Trestle	3724 ft.
Draw	234.6 ft.
Trestle	226.6 ft.

Length grading	4090 ft.
" trestle	3951 ft.
" draw	234.6 ft.
	8275.6 ft.
	1.57 under.

Grading, 5000 Cubic Yards.

Cost.....$1000.00

Trestle and Draw Spans.

Trestle 3650′ capped 4 pile
3650 × $4.77 per ft. = ... $ 17,410.00
2 abbts. at $126.65 ..... 253.30
16 trussed spans each 23′ long
16 × 23 = 368 lin. ft.
368 lin. ft. × $11.60 per ft. ..... $ 4,268.80
1 draw, 237 ft. long, estimated 20,000.00

$ 41,932.10

Cost $41,932.10

Cross Ties.

10 sets switch ties.
10 × $58.50 per set ..... $ 585.00
2816 ties per m. ¾ miles, 2816 × 75 = 2112 ties

Cost	48 cts.
Distributing	005
Haul	1.5
	.50

Ties 2112 × 0.50 ..... $ 1,056.00

$ 1,641.00

Cost $1,641.00

Steel Rails.

50# Steel, 78.57 tons per mile.

Tons 78.57 × 1.57 miles..... 123.35 tons.

Cost	$30.03
Loading	.40
Distribution	.40
Haul	.186
	$31.036 per ton.

Tons 123.35 × $31.04 ..... $ 3,828.78

Cost $3,828.78

Palatka Branch (Continued).

Fastenings.

Fastenings per mile..... $407.84

Miles ..... 1.57.

$407.84 × 1.57 ..... $ 640.30

Cost $640.30

Switches and Frogs and Stands.

50# Steel .....1.57 miles.

Switches, 10 sets.

Frogs	$24.00	)
Switches	22.50	) of 60# steel
Stands	12.50	)
	$59.00	per set

Sets 10 × $59.00 .....$ 590.00

Cost $590.00

Palatka Spur

Track Laying.

Miles 1.57 × $500.00 per mile .....$	785.00
Surfacing, ¾ mile at $150.00 per mile	112.50
$	897.50

Cost $897.50

Road Crossings.

1 Road Crossing, at $27.00 .....$ 27.00

Cost $27.00

South Mateo Junction, 62.8 Miles from Jacksonville.

Clearing and Grubbing.

2.7 miles clearing and grubbing at $300.00 per m. .....$ 810.00

Cost $810.00

Grading.

2.7 miles at 5000 cu. yds. per mi.
Miles, 2.7 × 5000 cu. yds. = 13500 cu. yds.
13500 cu. yds. at 20 cts. .....$ 2,700.00

Cost $2,700.00

Trestles.

1—A = 13′) Bents framed
2—A = 58′) 240 feet
2—B =169′)

Lin. ft. 240 × $61.01 .....$	1,442.44
3 sets abbts. at $126.65 a set .....$	379.95
$	1,822.35

Cost $1,822.35

Bridges. 000.000

Cross Ties. 2.7 Miles.

Miles 2.7 × 2816 ties per m. = 7603 ties.

Cost	48 cts.
Distribution	005
Haul	016
	.501

Ties, 7603 × 0.501 =	$ 3,809.10
2 sets switch ties	117.00
	$ 3,926.10

Cost $3,926.10

Steel Rail. 60#. 2.7 Miles.

Miles 2.7 × 94.3 tons per mile = 254.6 tons.

Cost	$30.05
Loading	.40
Distribution	.40
Haul	.189
	$31.039

Tons, 254.6 × $31.04	$ 7,902.78

Cost $7,902.78

South Mateo Junction (Continued)

Fastenings. 2.7 Miles.

Fastenings, $407.84 per mile, 2.7 Miles.

$407.84 × 2.7	$ 1,101.16

Cost $1,101.16

Switches and Frogs.

2 sets at $59.00	$ 118.00

Cost $118.00

Track Laying, 2.7 Miles.

Miles 2.7 at $500.00 per mile	$ 1,350.00
Miles 2.7 at $150.00 per mile	405.00
	$ 1,755.00

Cost $1,755.00

Road Crossings. 2.7 Miles.

5 road crossings at $27.00	$ 135.00

Cost $135.00

Ormond Spur. Ormond 104.1 Miles from Jacksonville.

Length total, 9256 ft. 1.75 miles

Spur		177 ft.	
Sidings		552 ft.	
		729 ft. =	0.14
Trestle	1057		
Draw	126		
Trestle	1657		
	2840		
Length grading		6416 ft.	
Trestles		2714	
Draw span		126	
Length of spur		9256 ft.	

Clearing and Grubbing ..... $ 300.00
Grading, 7,500 cu. yds. 1,500.00

Trestles and Bridges.

Trestle 2714 ft. cost $30,848.59
Draw 126 ft. Cost ..... $ 5,200.00
$36,048.59

From Cos. Books.
Cost..... $36,048.59

Cross Ties.

Switch sets 5 X 58.50 per set.
$58.50 X 5 ..... $ 292.50
6416 track = 1.21 miles.
Miles 1.21 X 2816 ties = 3407 ties.

Cost	48c
Dis.	005
Haul	026

Cost.....511 ct. 3407 X 51.1 cts ..... $ 1,741.00
$ 2,033.50

Cost..... $ 2,033.50

Steel, Main Line.

1.75 miles + .14 miles.
Spurs = 1.89 miles, steel 60#.
Miles 1.89 X 94.3 tons = 178.2 tons.

Cost	$30.05
Dis.	.40
Load.	.40
Haul	.16
	$31.01

Cost of steel delivered.....$31.01.
Steel on main line and spurs, 178.2 tons.
Tons 178.2 X $31.01 ..... $ 5,525.98

Cost..... $ 5,525.98.

Ormond Spur (Continued). 1.75 Miles.

Fastenings.

Main line	1.75 miles
Sidings, etc.	.14 miles
	1.89 miles.

Fastenings $407.84 per mile.
$407.84 X 1.89 miles ..... $ 770.81

Cost..... $ 770.81.

Frogs and Switches.

5 switches)
5 frogs) $59.00 per set.
5 stands)

Sets, 5 X $59.00 ..... $ 295.00

Cost..... $ 295.00.

Track Laying.

Main line	1.75
Spur	.14
	1.89

1.89 miles at $500.00 per mile ..... $ 945.00
Surfacing 1.21 miles at $150.00 per mile..... 181.50
$ 1,126.50

Cost..... $ 1,126.00.

Road Crossings.

7 road crossings at $27.00 ..... $ 189.00

Cost..... $ 189.00.

New Smyrna and Orange City, 124.6 Miles From Jacksonville.

Clearing and Grubbing.....26.8 Miles.

Miles 26.8 at $300.00 per mile ..... $ 8,040.00

Cost..... $ 8,040.00.

A. & W. Division, 26.80 Miles.

Grading Main Line, Sidings and Spurs.

13.85 miles lgt. 14 ft. rd. bed.
13.85 miles = 6648 cu. yds. per m. cu. yds. 92074.8
13 miles medium 13 miles X 10853 c. yds. per mi. 141089

233164 cu. yds

Main Line Branch, Total
8700 cu. yds. Average per m.
Sidings 10 = 7310 ft.
From frog to frog add 75 ft.
for each siding for length of grade.
75 X 70 = 750 + 7310 = 8060 ft.
8060 = 1.53 m. X 8700 cu. yds. = ... 13050 cu. yds.

Spurs 10 = 3040 ft. from
frog to frog add 37 ft. for each spur
for length of grade.
37 X 10 = 370 ft. + 3040 = 3410.
3410 = .65 m. X 8700 cu. yds. = ... 5655 cu yds.

Total Grading ..... 251869 cu yds.

Cost at 20 cts. per yd.
Cu. yds. 251869 X 20 cts. $50,373.80

Cost..... $50,373.80.

A. & W. Division.....Trestles.

New Smyrna to Orange Junction, 26.8 Miles.

Frames trestles, lin. ft. 1151 X $6.01 ..... $ 6,917.51
No. trestles, 15 X $126.65 abtts. 1,899.75

Capped trestle lin. ft. 42 X $4.77 ..... $ 200.34
No. trestles, 1 X $126.65 Abtts. 126.65

Log trestles lin. ft. 0000000 X $6.71 000000

Total Cost Trestles ..... $ 9,144.25
Average per mile.....$341.20.

Culverts.

No. Culverts.....23
Lin. ft.....221 X $7.49 ..... $ 1,655.29
Average ft, per m. 8.25, cost per m. 61.76.
Total Cost, Trestles and Culverts....$10,799.54.

Bridges.

Cost..... 000.00.

New Smyrna & Orange City (Continued).

A. & W. Division.

Cross Ties.

30 sets switch ties at $58.50 per set ..... $ 1,755.00
Switch ties, lin. ft. 3000)
Trestles & Culverts 1414) 4414 ft. = .83 Miles.
Main Line 26.80
Sidings, etc. 2.39
29.19
Less trestle ..... .83
28.36 Miles ties.

Miles 28.36 X 2816 ties = 59861.76.
Average cost ..... 48 cts.
Distribution 005
Haul 036
0.521 cts.
59862 ties at 52.1 cts. $31,188.10

Switch ties and cross ties $32,943.10

Cost..... $32,943.10.

Tracks.

Main Line, Siding and Spurs.

Main line 26.80 miles.
Sidings 10 = 7310 from frog to frog.
Add 150 to each siding for distance frogs to switches.
10 X 150 = 1500 + 7310 = length of track in sidings 8810 ft. = 1.67 mi.

Spurs, 10 = 3040 ft. from frog to end.
Add 75 ft. for track from frogs to switches.
10 X 75 = 750 + 3040 = length track in spurs = 3790 ft. = .72 mi.

Total miles track ..... 29.19 mi.

Frogs in sidings & spurs & 1 in. main line.

	Frogs	Switches
10 Sidings	20	20
10 Spurs	10	10
Main line	1	1
	31	31

Main line 26.8
Sidings & spurs 2.39

Steel Rail, 26.8 Miles 50# Steel Rail.

Main Line	26.8 mi.
Spurs & Sidings	2.39
Total miles	29.19

50# steel = 78.57 tons per mile.
Miles 29.19 X 78.57 tons = 2293-½ tons.

Loading	40 cts.
Distribution	40 cts.
Haul	41¢
	$1.214
Cost	30.05
Cost	$31.26 X 2293.5 = ... $71,695.71

Cost..... $71,695.71.

New Smyrna & Orange City (Continued).

Fastenings.

Main Line	26.8 miles
Sidings, etc.	2.39
Miles	29.19
Fastenings cost per mile.....	$407.84.
Miles 29.19 X $407.84	$11,904.84

Cost..... $11,904.84.

A. & W. Division. Switches & Frogs, 50# Steel.

30 frogs	$20.00)	
30 Switches	22.50)	$55.00
30 stands	12.50)	
30 Frogs, Switches and Stands at $55.00 30 X $55 = ...		$ 1,650.00

Cost..... $ 1,650.00.

Track Laying.

Main Line	26.8 miles	
Sidings, etc.	2.39	
Miles	29.19	
Miles 29.19 at $500.00 per mile		$ 15,595.00
Surfacing, 29.19 mi. X $150.00 per mile		$ 4,378.50
		$ 18,973.50

Cost.....$ 18,973.50.

Road Crossings.

45 Road Crossings at $27.00 .....$ 1,215.00

Cost..... $ 1,215.00.

Titusville 154.4 Miles From Jacksonville.

Titusville and Sanford.....35-¼ Miles.

Clearing and Grubbing.

35-¼ miles at $300.00 per mile.
35.25 miles X $300.00 ..... $ 10,575.00

Cost.....$ 10,575.00.

Grading.

Main line, 35.25 miles, grading.
Medium 10853 cu. yds. per mi.
10853 X 35.25 miles = ... 382568 cu yds.

Sidings 8, length from frog to frog 4893 ft.
Add 75 ft. for grading. 75 X 8 = 600.
4893 + 600 = 5493 ft. = 1.04 miles X aver. 10853 c. y = ... 11286 cu yds.

Spurs, 10, length from frog to Eng.
4217 ft. Add 75 ft. to each spur for grading.
10 X 75 = 750 + 4217 ft. = 4967 ft. = .94 miles.
10853 cu. yds. X .94 miles = ... 10202 cu. yds.

Total Cu. yds. grading ..... 404056 cu. yds.
Average per m. 11463.
At 20 cts. per yd. 404056 X 20 ..... $ 80,811.00
Average cost per mile $2292.50.

Cost.....$ 80,811.00.

Trestles.

Titusville to point owned by F. E. C. Rwy. 35-¼ miles.

Framed trestle lin. ft. 2423 X $6.01 ..... $ 14,562.23
No. trestles, 16 X $126.65 for bulkheads 2,026.40

Capped trestles 321 ft. at $4.77 ..... 1,531.17
No. trestles, 9 X $126.65 abtts. 1,139.85

Log trestles 18 ft. at $6.71 ..... 120.78

Total Cost Trestles .....$ 19,380.43.
Average per mile .....$ 549.79.

Culverts, Titusville Line.

No. Culverts, 26.
Lin. ft. length 280 ft. at $7.49 ..... $ 2,097.00
Lin. ft. per mile 7.9 = cost per mile..... $59.49.

Cost Trestles and Culverts.....$ 21,477.43.

Bridges.

Cost 000.00

Titusville and Sanford Branch (Continued).

Crossties.

Trestles & Culverts lin. ft. 3042
Switch ties 1800

4842 ft.

4842 ft. = .92 miles. 35.25 — .92 = 34.33 miles.
Ties 2816 X 34.33 miles = 96673 ties.

Price 48 cts.
Distribution 005
Haul 043

.528

96673 ties at 51 cts. ..... $ 51,043.34
18 sets switch ties at $58.50 per set 1,053.00

$ 52,096.00

Cost..... $ 52,096.00.

Track. 35.25 miles. 35.25 miles

8 sidings, length from frog to frog 4893 ft.
Add to each siding 150 ft. for length of track.
8 X 150 = 1200 + 8493 ft. = 9693 ft. = 1.83 miles.

10 spurs, 4217 ft. from frog to end.
Add to each spur 75 ft. for track.
10 X 75 = 750 ft. 750 + 4217 ft. = 4967 ft. = .93 miles.

Sidings and spurs 2.77. Main line 35.25 38.02 miles
S. & S. 2.77

35-¼ miles steel rail, 60#.
2.77 miles sidings and spurs.
Miles 35.25 + 2.77 = 38.02.
38.02 miles 60# steel. 60# steel = 94.3 tons per m.
Miles 38.02 X 94.3 = 3585.3 tons.

Cost $30.05 per ton
Loading .40
Distributing .40
Hauling .516

$31.37 per ton
Steel 3585.3 tons X $31.37 = ... $112,470.86

Cost..... $112,470.86.

Fastenings.

Main Line ..... 35.25 miles
Sidings etc. 2.77

Miles 38.02

$407.84 per m. X 38.02 miles = ... $ 15,506.07

Cost..... $ 15,506.07.

Titusville & Sanford Branch (Continued).

Frogs and Switches. 35.25 miles.

Switches	18	$22.50)	
Frogs	18	24.00)	$59.00
Stands	13	12.50)	

18 sets X $59.00 ..... $ 1,062.00

Cost..... $ 1,062.00.

Track Laying.

Main line	35.25 miles
Sidings and spurs	2.77 miles
Total Miles	38.02

Miles 38.02 at $500.00 per mile .....$ 19,010.00

Cost.....$ 19,010.00.

Road Crossings.

60 road crossings at $27.00 ..... $ 1,620.00

Cost..... $ 1,620.00.

West Palm Beach Branch, 299 Miles From Jacksonville.

1.15 miles main line.
3.12 miles spurs and sidings.

Grading and Clearing.

½ mile clearing	$ 150.00	
Grading 3.77 miles siding and spurs, 5000 cu. yds. per mile = 18850 cu. yds. at 20 cts.	$ 3,770.00	
		$ 3,920.00

Cost..... $ 3,920.00.

Trestles and Bridges.

From Cos. Reports.

Trestle 2275 ft. X	$ 45,477.99	
Draw 125 ft. = ...	9,733.16	
		$ 54,211.15

Cost.....$ 54,211.15.

Crossties.

16 sets switch ties at $58.50.
$58.50 X 16 sets = ... $ 936.00
16 sets = 1600
Tres. & Brd. 2400

4000 — 76

100 M

Length main line and Sidings and spurs 4.27 — .76 = 3.51 m.
Miles 3.51 X 2816 ties = 9884 ties.

Cost	48 cts.
Distributing	005
Haul	075
Cost	560 cts.

9884 X 56 cts. ..... $ 5,625.00

$ 6,561.00

Cost..... $ 6,561.00.

Rails.

Main line ..... 1.15 miles.
Sidings & spurs 3.12

4.27 miles.

60# Steel Rails.

60# Rails = 94.3 tons per mile.
94.3 X 4.27 miles = 402.66 tons.

Cost	$30.05
Loading	.40
Distributing	.40
Hauling	.45
Cost	$31.30 per ton.

Tons 402.66 X $31.30 = ...$ 12,603.25

Cost.....$ 12,603.25.

Palm Beach Spur (Continued).

Switches and Frogs.

Frogs, rigid 16)
Switches 16) $56.75
Stands 16)

16 sets X $56.75 ..... $ 908.00

Cost.....$ 908.00.

Fastenings.

Fastenings cost per mile $407.84.

Main line, length	1.15 miles
Sidings and spurs	3.12
Miles	4.27

Miles 4.27 X $407.84 ..... $ 1,741.47

Cost..... $ 1,741.47.

Track Laying.

Main line	1.15 miles
Sidings and Spurs	3.12 miles
Miles	4.27

Miles 4.27 at $500.00 per mile	$ 2,135.00
3.51 miles surfacing at $150.00 per mile	$ 526.50
	$ 2,661.50

Cost..... $ 2,661.50.

EXHIBIT ——

Summary

Florida East Coast Railway

Equipment.

Value of Passenger Equipment	$ 859,808.34
Value of Freight Equipment	832,578.00
Value of Maintenance Way Equipment	113,645.00
Value of Miscellaneous Equipment	38,340.00
Value of Locomotives	711,715.75
	$2,556,087.09

Buildings.

Value Water Stations	$ 46,887.40
Value Maintenance Way Buildings	45,835.26
Value Station and other buildings	570,821.65
	$ 663,544.30
Add for increased cost labor & material 40%	265,417.72
	$ 928,962.02

Machinery and Tools.

Value Machinery and Tools	$ 99,778.48
Value Maintenance Way Tools	13,283.34
	$ 113,061.82

Stock on Hand.

Stationery, Furniture & supplies at station	$ 72,924.58
Stationery in Store not issued	7,741.56
Buffet Supplies in Store	1,596.82
Shop Supplies and material	239,704.31
Fuel, Coal	46,926.28
Cross Ties not distributed	111,507.55
Steel Rails (Relayers)	272,221.95
Frogs and Switches (Relayers)	4,197.80
	$ 756,820.85

Note:—

Present price	building material	$18.00.	Former $10.00	per M. Inc.	$8 = 80%
" "	bridge "	21.00,	" 10.00	" " "	$11 =110%
" "	labor (common)	1.50,	" .95	per day "	55c = 63%

Cost of Water Stations and Buildings

From	To	Water Stations	M. W. Buildings	Other Buildings	Total
Jacksonville	St. Augustine	5153.25	3281.31	9428.95	17863.51
St. Augustine	E. Palatka	5899.01	694.00	240467.66	240060.67
E. Palatka	New Smyrna	5798.78	5814.88	41445.91	53059.57
New Smyrna	Rockledge	6180.89	5779.50	37830.83	49791.22
Rockledge	Ft. Pierce	3101.54	5397.49	24849.73	33348.76
Ft. Pierce	W. Palm Beach	2481.82	3709.31	26525.47	32716.60
W. Palm Beach	Miami	5670.87	6042.78	62446.89	74160.54
Miami	Homestead	3656.54	8421.43	61129.53	72607.50
S. Jacksonville	Mayport	7919.66	3072.56	55018.60	66110.82
New Smyrna	Orange City Jct.	725.04	1812.00	9716.01	12253.05
Titusville	Enterprise Jct.	500.00	1800.00	1862.06	4162.06
Total, All Divisions		46887.40	45835.26	570821.64	663544.30
Add for increased price labor & material 40%					265417.72
					$928962.02

Note:—

Price building material 1895 $10.00 per M.
Price " " 1907 $18.00 per M.
Price " " Average $14.00 per M.
Price " " Increase 40%.
Price common labor 1895, $0.75 per day.
" " " 1907, 1.50 per day.
" " " Average $1.12½ per day.
" " " Increase 67%.
Average cost of material & labor increase 53½%.

Inventory.

Tools and Machinery.

Station	Tools.	Amount
St. Augustine	Machine Shop Tools and Machinery	$68,030.80
St. Augustine	Car Shop Tools and Machinery	9,275.69
Miami	Shop Tools and Machinery	901.57
Fort Pierce	Shop Tools and Machinery	619.94
New Smyrna	Shop Tools and Machinery	1,302.18
	Small Shop Tools and Appliance	4,200.00
	Bolts, Pulleys and Shafting	3,500.00
St. Augustine	Wrecking Outfit	6,098.30
Fort Pierce	Wrecking Outfit	5,850.00
	Total	$99,778.48

Maintenance Way.

Tools.

Standard Equipment	Section Gangs	$ 7,367.53
" "	Extra Gangs	1,112.08
" "	Work Train	1,112.08
" "	Track Laying	1,390.10
" "	Bridge	2,301.55
		$13,283.34

Total, $113,061.82.

Steel Rails (Relayers).

Frogs and Switches on Hand.

Rails.

Tons	Section	Price	Present Value
283	60#	$28.00	$ 7924.00
8184	56#	28.00	229152.00
190	50#	30.00	5700.00
263	40#	30.00	7890.00
8920			$272221.95

Frogs.

100	56#	24.00	2400.00
4	50#	20.00	80.00
12	40#	13.00	169.00
			$2649.00

Switches.

100	56#	22.50	2250.00
4	50#	22.50	90.20
13	40#	19.00	247.00
			$2587.20
			$2777458.15
Add for average haul and handling			11555.95
Total			$ 289014.10

Note:—
3/10c per Ton for haul.
40c per Ton for handling.

EXHIBIT ——

Equipment.

Florida East Coast Railway.

Passenger Equipment.

Coaches, all classes	59	$325,800.00
Parlor Cars	20	179,422.24
Express Cars	20	97,200.00
Mail Cars	5	24,300.00
Baggage Cars	9	39,900.00
Sleeping Cars	8	115,400.00
Drawing Room Cars	2	38,000.00
Private Cars	3	26,500.00
Ganz Motor Cars	1	13,230.10
Total Passenger Equipment	127	$859,808.34

Freight Equipment.

Box Cars	784	$519,600.00
Flat Cars	464	257,953.00
Stock Cars	14	7,350.00
Gondola Cars	50	22,250.00
Caboose Cars	15	25,425.00
Total Freight Equipment	1327	$832,578.00

Maintenance Way Equipment.

Rock Ballast Cars	100	$ 88,500.00
Crank Cars	35	10,500.00
Tool Cars	6	1,800.00
Pile Driver Cars	2	1,200.00
Sand Spreader Cars	1	745.00
Rapid Unloader Car	1	3,600.00
Marion Steam Shovel	1	5,880.00
Rock Ballast Plow	1	420.00
Gasoline Motor	1	1,000.00
Total M. W. Equipment	148	$113,645.00

Miscellaneous Equipment.

Cinder Car	1	$ 450.00
Wrecking Crane	1	11,250.00
Locomotive Crane	5	25,740.00
Tank Fire & Pump Car	1	900.00
Total Miscellaneous Equip.	8	$38,340.00

Locomotives.

All Classes	61	$711,725.75

Equipment per Mile of Road.

Passenger Cars	1 per 4 miles of Road
Freight Cars	2.65 per 1 mile of Road
Maintenance Way	1 per 3 miles of Road
Locomotives	1 per 12 miles of Road

Value Total Equipment $2,556,087.09

EXHIBIT 8. J. C. Hancock.

Dade County Beginning at St. Lucie River to West Jupiter.

	Sec.	T.	R.	Acres		Valuation	Amount
From M. P. 261 to 262	5-4	38	41	8.38		80.00	670.00
" " 262 to 263	4-9	38	41	3.03	No Deed	80.00	242.40
				9.09		10.00	90.09
" " 263 to 264	15	38	41	1.12	" "	10.00	11.20
" " 264 to 265				11.00		10.00	110.00
Hanson Grant		38	41	12.12	" "	10.00	121.20
From M. P. 265 to 266				6.00	" "	10.00	60.00
Hanson Grant		38	41	6.12		10.00	61.20
From M. P. 266 to 267							
Hanson Grant		38	41	12.40		10.00	124.00
From M. P. 267 to 268							
Hanson Grant &		30	41-42	12.10		10.00	121.00
		30		3.92	" "	10.00	39.20
From M. P. 268 to 269							
	29-32	38	42	8.20		10.00	82.00
" " 269 to 270				2.40	" "	30.00	72.00
Gomez Grant &	32	39	42	9.72		30.00	291.60
From M. P. 270 to 271							
Gomez Grant		39	42	12.12		30.00	363.60
From M. P. 271 to 272							
Gomez Grant		39	42	12.12		30.00	363.60
From M. P. 272 to 273							
Gomez Grant		39	42	12.12		30.00	363.60
From M. P. 273 to 274							
Gomez Grant		39	42	12.12		30.00	363.60
From M. P. 274 to 275							
Gomez Grant	26	39	42	14.40		30.00	432.00
From M. P. 275 to 276	26-35	39	42	10.50		75.00	787.50
" " 276 to 277	35-2	39					
		40	42	12.12		75.00	909.00
" " 277 to 278	2-11	40	42	15.56		50.00	778.00
	11-12						
" " 278 to 279	13	40	42	9.58		30.00	287.40
" " 279 to 280	13-24	40	42	12.52		10.00	125.20
" " 280 to 281	24-25	40	42	24.24		10.00	242.40
	25,						
" " 281 to 282	30-31	40	42-43	24.24		10.00	242.40
" " 282 to							
River, West Jupiter,	31	40	43	10.62		75.00	796.50
							$ 8151.50

Dade County.

Valuation of Lots Used for Railroad Purposes and Belonging to the Florida East Coast Railway Company in Dade County, as per Valuation Made by Mr. J. C. Hancock.

Stuart,	
Lot numbered 3 in Section 5 Twp. 38 Range 41 at $100 per acre, containing 8 acres	$800.00
Strip 135 ft. wide, East side Right Way across Lot 2.....	600.00
Lot 50 x 200 ft. East side Right Way in Lot 1.....	200.00
Hobe Sound	
Lot 100′ x 200′ East Side Right Way Section 3.....	300.00
Lot 50′ x 300′ West side Right Way " 3.....	250.00
	$2,150.00

Stuart, Fla., Nov. 14th, 1907.

Valuation of Lands Belonging to the F. E. C. Ry.
Stuart to West Jupiter, Inclusive.

Stuart.

Lot numbered three (3) Sec. numbered five (5) Tp. 38 S. R. 41 East. containing Eight Acres, more or less, $100.00 per acre Strip 135 feet wide East side R/W across Lot two (2)..... $600
Lot 50′ x 200′ East Side R/W in Lot 1 ..... $200

Right of Way, Stuart, $400

Lands Adjacent.

Lots in the platted portion of town 50 x 125 $90 per lot.
One tier back from R/W abutting R/W, $200 to $500 per lot
Land adjacent to platted portion available for Pines, $100 to $200 per acre.
Original cost per acre of above land before the R. R. came (except where it was homesteaded) $1.25 per acre.

Alicia.

In R/W 200′ wide, 1300′ long, at $10 per acre.
Lot 100′ x 200′ East side R/W $10.00
Ten

Lands Adjacent.

High river front land East side, $100 per acre
West side—from $2.50 to $10 per acre

Gomez.

Pine Apple land at this station now selling at $30 per acre
From 50 to 80 acres of bearing Pines valued at $300 to $400 per acre.

Hobe Sound.

Lot 100′ x 200′ East side R/W Sec. 3..... $300
Lot 50′ x 300′ West " " " $250
Land along R/W North and South of station in the vicinity is valued at $75 per acre. Land on the East and West side of station, reserved for building lots—and will be worth from $50 to $150 per lot according to location.

Likely.

Land in this locality is selling for $10 per acre.
Several acres both sides of the R/W at this Station in bearing Pines, worth $300 to $400 per acre.

Exhibit A.

As to Valuation of Right of Way
F. E. C. Ry.

It is understood that the valuation of right of way fixed by this statement applies only on that portion of R/W not covered by value set up in report herewith, designated as "Exhibit A."

Sec. 4-38-41.

Land in the portion of Sec. through which R. R. crosses is being held by the owners from $75 to $150 per acre.

Section Nine, Ten & Fifteen, $10.00 per acre.
Through Jno. M. Hanson Grant, $2.50 to $10 per acre.
Section Twenty-nine, Thirty & Thirty-two $10 per acre.
"Gomez Grant" 4½ miles long, $2.50 to $30 per acre.
Sec. 27 & 35 Tp. 39 R. 42 East, $10 to $75 per acre.
Sec. 2 Tp. 40 R. 42 East, NE ¼ NW ¼ $30 to $75 per acre, balance of Sec. also 11, 13, 24 & 30, $10.
Section thirty-one $10 to $75 per acre.
Price of land adjacent to above Sections is held at from $2.50 to $100 per acre depending on the demand, and also on the accessibility to railroad and shipping points.

Exhibit B.

[Endorsed]: Filed in evidence marked Petitioner's Exhibit 8, Jan'y 15, 1912.

EXHIBIT 9.

Estimate of the Value of the Following Real Estate Property of the Florida East Coast Railway Company, Part of Dade County. From West Jupiter to M. P. 306.

Station Grounds at West Jupiter, Including Right of Way, Lot 1, Cabot's Subdivision, North Part Lot 4, Sec. 31, Tp. 40, Range 43, and all on East Side and 100 ft. on West Side of Railway Through Gov'ment Lot 7, Sec. 36, Township 40, Range 42.							Amount.	Per Cent Increase.	Present Value.
							$1,000.00	50%	$1,500.00
West Jupiter to		Sec.	Tp.	R.	Acres.	Valuation.			
M. P. 284		1	41	42	10.86	$40.00	434.40	50%	651.60
M. P. 284 to	285	1-12	41	42	12.12	5.00	60.60	100%	121.20
285	286	12-13	41	42	12.12	5.00	60.60	100%	121.20
286	287	13-24	41	42	12.12	5.00	60.60	100%	121.20
287	288	24-25	41	42	12.12	5.00	60.60	100%	121.20
288	289	25-36	41	42	12.12	5.00	60.60	100%	121.20
289	290	36-1-6	41-42	42-43	12.12	5.00	60.60	100%	121.20
290	291	6-7	42	43	12.12	5.00	60.60	150%	151.50
291	292	7-17-18	42	43	12.12	5.00	60.60	150%	151.50
292	293	17-20	42	43	12.12	5.00	60.60	150%	151.50
293	294	20-29	42	43	12.12	10.00	121.20	100%	242.40
294	295	29-28-33	42	43	12.12	10.00	121.20	50%	181.80
295	296	33-4	42-43	43	12.12	15.00	181.80	0%	181.80
296	297	4-9	43	43	12.12	25.00	303.00	20%	363.60
297	298	9-16	43	43	12.12	30.00	363.60	100%	727.20
298	Ry. Intersection with 5th Ave. in West Palm Beach	16	43	43	10.50	50.00	525.00	200%	1,575.00
									$6,605.10

West Palm Beach.

	Original Value.	Per Cent Increase.	Present Value.
Station grounds including right of way, but excluding buildings and tracks, lying between East Railway Avenue and West Railway Ave., 1st and 5th avenues	$30,611.00	25%	$38,263.00
Railroad reserve between 3rd and 4th Aves., Poinsetta St. and Latana Ave., including right of way	17,698.00	25%	22,122.00
All of block between Althea St. and 1st Ave. and East Railroad Ave. and West Railroad Ave	5,100.00	25%	6,375.00
Right of way from Althea St. to Intersection of Southside Blocks 20 and 21	13,850.00	50%	20,775.00
Lot 6, Block 18	1,150.00	50%	1,725.00
Lot 18, Block 12	1,000.00	50%	1,500.00
Lot 100 by 124 feet, in Block 51, Northwest corner Ban Yan Street and Railroad Way	850.00	100%	1,700.00
East half of Lot 2, Block 27	200.00	25%	250.00
West half of Lot 2, Block 27	200.00	25%	250.00
East half of Lot 3, Block 27	200.00	25%	250.00
Lot 9, Block 32, Clows Addition	225.00	20%	270.00
Lot 10, Block 32, " "	275.00	10%	300.00
Lot 8, Block 32, " "	225.00	20%	270.00
Lot 1, Block 32, " "	250.00	10%	275.00
Block 52, Lots 1 to 6, inclusive	2,700.00	10%	3,000.00
All Block 53	6,700.00	100%	13,400.00
	84,819.00		
From East Ry. Ave. to Poinsetta St. and W. line B 52 to curved track	4,000.00	10%	4,400.00
From East Side Poinsetta Street to the Lake	7,000.00	100%	14,000.00
From North Side Althea St. running in a curve to Water St. or Clear Lake	4,000.00	25%	5,000.00
	$99,819.00		$134,125.00

Palm Beach.

Aggregate value of right of way, and station grounds, excluding buildings and tracks, at Palm Beach, Florida, on 7.68 acres, at $3,000 per acre..... Amount. $23,040.00

Estimate of Value of the Right of Way of the Florida East Coast Railway from Intersection of South Side of Block 20 and 21 in West Palm Beach to 306 Mile Post.

From South side of Block 20 and 21, West Palm Beach		Sec.	Tp.	R.	Acres.	Valuation.	Amount.	Per Cent Increase.	Present Value.
to 300 mile post		21-28	43	43	5.30	$200.00	$1,060.00		7,950.00
From 300	to 301	28-33	43	43	8.20	100.00	820.00	100%	1,640.00
M. P. 301	302	33-4	43-44	43	7.20	75.00	540.00	33 1/3%	667.00
302	303	4-9	44	43	12.12	50.00	606.00	100%	1,212.00
303	304	9-16	44	43	10.00	30.00	300.00	50%	450.00
304	305	16-21	44	43	11.09	20.00	238.00	150%	595.00
305	306	21	44	43	6.06	20.00	121.20	100%	242.00
Section house lot near 306 M. P.		21	44	43	.50	20.00	10.00	50%	15.00
							21.00		
							37.00		
							37.00		
							12.00		
							$26,735.20		

From personal and in the most part intimate knowledge of all the lots and lands embraced in the foregoing list, all in Dade County, Florida, I hereby certify that the values stated are correct to the best of my judgment.

Jacksonville, Fla., April 25, 1908.

		5,400
		112,300
	84,819.00	23,040
	26,735.20	12,771
	111,554.20	153,511
		1,500
99,819	North of W P B	6,605
	W P B	134,125
23,040	P B	23,040
3,695	South of W P B	12,771
126,554		178,041
	40% inc. +	

Estimate of the Value of the Following Real Estate, Property of the Florida East Coast Railway Company, in Dade County, Florida, from West Jupiter South to West Palm Beach.

Station grounds at West Jupiter; Lot 1 Cabot's Subdivision North part Lot 4, Section 31 T. 40 R. 43 and all on East side and 100' on West side of railway through Government Lot 7 Sec. 36, T. 40, R. 42 ..... $1,000.00

F. E. C. Ry. Right of Way from West Jupiter South to Railway intersection with Fifth Avenue in West Palm Beach..... 2,500.00

West Palm Beach.

Station grounds, including right of way, but excluding buildings and tracks, lying between East Railway Avenue and West Railway Avenue, First and Fifth Avenue	$30,611.00
Railroad Reserve between Third and Fourth [illegible]nue, Poinsetta St. and Lantana Avenue, including right of way	17,698.00
All of Block between Althea St. and First Ave. and East Railroad Avenue and West Railroad Ave	5,100.00
Right of Way from Althea St. to intersection of South sides of Blocks 20 & 21	13,850.00
Lot 6, Block 18	1,150.00
Lot 18, Block 12	1,000.00
Lot 100 by 124 feet in Block 51 N. W. Cor. Banyan St. and Railroad Way	850.00
East ½ Lot 2, Block 27	200.00
West ½ Lot 2, Block 27	200.00
East ½ Lot 3, Block 27	200.00
Lot 9, Block 32, Clow's Addition	225.00
Lot 10, Block 32, Clow's Addition	275.00
Lot 8, Block 32, Clow's Addition	225.00
Lot 1, Block 32, Clow's Addition	250.00
Block 52, Lots 1 to 6 inclusive	2,700.00
All Block 53	6,700.00
Right of Way from intersection of South side of Blocks 20 and 21 in West Palm Beach to 300 Mile Post	1,200.00

West Palm Beach to South Part Sec. 21-44-43.

Right of Way from 300 Mile Post, South, to 306 Mile post including Section house lot in extreme South part of Sec. 21, Township 44 Range 43, near said Mile Post	$2,800.00

(Note: Sec. house lot not included in r/w, estimate $100.)

Aggregate value of right of way, Palm Beach East side Lake Worth, including station grounds	$23,040.00

From personal and for the most part, intimate knowledge of all the lots and lands embraced in the foregoing lists, extending from West Jupiter South to Section 21, Township 44, South of Range 43 East, all in Dade County, Florida.

I hereby certify that the values stated are correct to the best of my judgment.

West Palm Beach, Fla., Nov. 9th, 1907.

[Endorsed]: Filed in evidence marked Petitioner's Exhibit 9, Jan'y 15, 1912.

Exhibit 10.

March 7.

South Jacksonville.

Water Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10	$ 1,500.00 each	50%
Lots 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Block 2	500.00 each	50%
Lot 7, Block 2	700.00	
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21 and 22, Block 1	500.00 each	50%
Lots 4, 5, 8, 9, 10, Block 3	400.00 each	
Lots 8, 9, 10 and 11, Block 5, Read's Sub-division	300.00 each	
All of Block 25	3,000.00	
Tract at Ferry Dock, beginning at NE corner of Read's Sub., running 600 feet on River Front and 1,800 ft., more or less, in depth	150,000.00	50%
209 ft. square in S. W. corner of Block 29	1,500.00	
Tract within Y, comprising part of Blocks 8, 17 and 18 and land deeded by H. E. Ebersole, extending South to South line of the I. Hendricks' Grant	3,000.00	30%

Mayport.

The 5.24 acres known as "The Old Mill Site" or "Durkee property," with the marsh lands adjacent	$25,000.00	25%
Water Lots 1, 2, 3, 4, 5, 6, 7, 8, 9	2,500.00 each	
Water Lots 12 and 13	2,000.00 each	
Water Lots 14 and 15	1,500.00 each	
Lot 10, Block 1	1,200.00	
Lot 11, Block 1	1,200.00	
Lots 12, 13, 14 and 15, Block 1	1,000.00 each	
Lots 6 and 7, Block 1	800.00 each	
Lot 16, Block 1, Ledwith property	2,500.00	

South Jacksonville.

Main Line	Sec.	Tp.	R.			
	23	2	26			$2,000.00 per acre
	44	2	26	(Grant)	30%	2,000.00 " "
	46	2	26	"		300.00 " "
	47	2	26	"		100.00 " "

Sections, Townships and Ranges Through Which Fla. E. C. Ry. and Mayport Branch Passes in Duval Co.

Parts of Section.		Sec.	T.	R.	Value per Acre.	
Bridge Landing		23	2	26	$2,000.00	
Main Line	Grant	44	2	26	2,000.00	
	"	46	2	26	300.00	
	"	47	2	26	100.00	
Mayport Division						
	Grant	44	2	26)	150.00	
	"	45	2	26)		
Main Line						
	Grant	44	2	27)		
		31	2	27)		
	Grant	56	3	27)		
		16	3	27)		
		21	3	27)		
		22	3	27)		
	Grant	56	3	27)		
		27	3	27)		
		34	3	27)		
	Grant	53	3	27)		
		34	3	27)		
	Grant	52	4	27)		
	"	50	4	27)		
		2	4	27)	10.00	
		1	4	27)		
		12	4	27)		
		18	4	28)		
	Grant	37	4	28)		
		19	4	28)		25%
		20	4	28)		
		29	4	28)		
		28	4	28)		
		33	4	28)		
	Grant	48	4	28)		
		34	4	28)		
Mayport Division						
	Grant	43	2	27)		
	"	53	2	27)		
		29	2	27)		
	Grant	42	2	27)		
	"	52	2	27)	$5.00	
	"	51	2	27)		
	"	35	2	27)		
		36	2	27)		
		31	2	28)		
		32	2	28)		
		33	2	28)		
		34	2	28)		
		35	2	28)		
		36	2	28)		
		31	2	29)		
		32	2	29)		
	Grant	38	2	29)	From Pablo to Mayport	
		33	2	29)	$20 per acre.	
		28	2	29)		$1,000
		21	2	29)		
		16	2	29)		
		9	2	29)		
		4	2	29)		
	Grant	38	1	29)		
		32	1	29)		
		30	1	29)		

Mayport.

	Sec.	Tp.	R.	
Grant	44	2	26	$150.00 per acre
"	45	2	26	150.00 " "

Main Line.

Grant	44	2	27 to	
	48	2	28	$10.00 " "

Mayport Division.

Grant	43	2	27 to	
	53	2	27	
"	29	2	27	
"	42	2	27	
"	52	2	27	
"	52	2	27	
Grant	51	2	27	
	35	2	27	
	36	2	27	
	31	2	28	
	32	2	28	
	33	2	28	
	34	2	28	$5.00 per acre
	35	2	28	
	36	2	28	
	31	2	28	
	32	2	29	
	38	2	29	
	33	2	29	
	28	2	29	
	21	2	29	$20.00 per acre
Rt of Way through	16	2	29	$1,000.00
	9	2	29	
	4	2	29	
	38	1	29	
	32	1	29	
	31	1	29	$20.00 per acre

[Endorsed]: Filed in evidence marked Petitioner's Exhibit 10, Jan'y 15, 1912.

1

EXHIBIT 13.

S. W. Rowley
General Merchandise.

(Rec'd Nov. 11, 1907.)
San Mateo, Florida, Nov. 6th, 1907.

Mr. J. E. Ingraham,
3d Vice President
St. Augustine, Fla.

Dear Sir:

In compliance with your request of Nov. 1st, I enclose herewith my estimated valuation of the F. E. C. Ry. Co. in Putnam County, East of St. Johns River. These estimates are made after a personal inspection, refer only to the land, and do not cover buildings and other improvements.

		Increase		Increase
Orange Mills Depot Lot				
100 feet square in Sect. 41-9-27				
Value $20.00 per acre		$100.00	$4.50	$22.50
East Palatka Depot Lot				
50 x 1320 feet Part Lot 6, Sect. 5-10-27				
Value $100.00 per acre		200.00	157.00	314.00
Lot 4 acres, Sect. 8 & 38 10-27	Value 25.00	50.00	100.00	200.00
Lot 5 ⅛ Sect. 8-10-27	Value 25.00	50.00	131.25	263.50
Lot 50 x 565 feet, Sect. 5-10-27	Value 25.00	50.00	16.25	32.50

2

Oakside Station Lot	
Part of NE ¼ of NE ¼ Sect. 15-10-27	
100 x 200 feet. Value $25.00 per acre	$11.00
Part of N ½ of NE ¼, Sect. 15-10-27	
105 x 210 feet. Value $25.00 per acre	13.00
San Mateo Terminal Lot	
3 acres Sect. 28-10-27 Value	$1,000.00
1 acre Sect. 48-10-27 Value	500.00
Right of Way	
Sect. 5—10—27 12 acres @ 20.00	240.00
Sect. 38—10—27 9 acres @ 25.00	175.00
In John Huertens Grant:	
10—27 12 acres @ 20.00	240.00
Sect. 9—10—27 9 acres @ 10.00	90.00
Sect. 16—10—27 12 acres @ 25.00	300.00
Sect. 21—10—27 6 acres @ 50.00	300.00
Sect. 28—10—27 4 acres @ 50.00	200.00
Sect. 15—10—27 12 acres @ 20.00	240.00
Sect. 14—10—27 12 " @ 20.00	240.00
Sect. 13—10—27 12 " @ 10.00	120.00

(Signed) S. W. Rowley.

3 Putnam County.

Orange Mills Depot Lot
100 ft. sq. in Sec. 49—9—27 Valued $20.00 per acre..... $4.50

East Palatka Depot Lot.
50 x 1320 ft. part Lot 6 Sec. 5—10—27.
Valued $100.00 per acre, 1.57 acre 157.00

Lot 4 acres Sec. 8 & 38—10—27.
Valued $25.00 per acre 100.00

Lot 5¼ acres, Sec. 8—10—27, Valued $25.00 acre 131.25
Lot 50 x 565 ft. Sec. 5—10—27, 65/100 acres.
Valued at $25.00 per acre 16.25

Oakside Station Lot.
Part of NE ¼ Sec. 15—10—27; 100 x 200 ft.
Valued at $25.00 per acre 11.00
Part N ½ of NE ¼ Sec. 15—10—27, 105 x 210 ft.
Valued at $25.00 per acre 13.00

San Mateo Terminal Lot.
3 acres Sec. 28—10—27. Valued at..... 1000.00
1 acre " 48—10—27 " at..... 500.00

$ 1933.00

Right of Way.
See separate list.

4 Putnam County.

	Sec.	T.	R.	Acres.	Valuation.		Amount.
From M. P. 55 to 56	24-37	9	27	12.12	No Deed	20.00	242.40
" " 56 to 57	49-48	9	27	12.12		20.00	242.40
" " 57 to 58							
Jno. Huertas Grant	48-49	9	27	12.12		20.00	242.40
From M. P. 58 to 59							
Jno. Huertas Grant	48-49	9	27	12.12		20.00	242.40
From M. P. 59 to 60							
Jno. Huertas Grant	49	9	27	12.12		20.00	242.40
				3.03			60.60
From M. P. 60 to 61	49-5	9-10	27	9.09	"	20.00	181.80
From M. P. 61 to 62	5-8	10	27	12.00		20.00	240.00
To St. Johns River.							
Palatka Branch	38	10	27	9.00		25.00	225.00
From M. P. 62 to 63	39-9	10	27	17.62		25.00	440.50
	9-16			8.00		10.00	80.00
San Mateo Branch	21-28	10	27	16.90		50.00	845.00
	48						
				6.00		10.00	60.00
From M. P. 63 to 64	9-15	10	27	6.12		20.00	122.40
				2.00	"	20.00	40.00
" " 64 to 65	16-14	10	27	10.12		20.00	202.40
				6.12	"	20.00	122.40
" " 65 to 66	14-13	10	27	6.00	"	10.00	60.00
" " 66 to St.				4.58	"	10.00	45.80
Johns County	13	10	27	3.03		10.00	30.30

$3968.20

[Endorsed]: Filed in evidence marked Petitioner's Exhibit 13, Jan'y 15, 1912.

EXHIBIT 14.

Affidavit of Frederick S. Morse.

State of Florida)
County of Dade)

I hereby certify that on this 10th day of February, A. D. 1908, personally appeared before me, a Notary Public, Frederick S. Morse, a real estate agent at Miami, Fla., who is known to me to be a person worthy of credit and well posted as to the value of lands between Dania, Florida, and Miami, Florida; who being first duly sworn, deposes and says that according to his judgment he estimates the following lands owned by the Florida East Coast Railway Company to have been worth about June 1st, 1907, as follows: These estimates are made according to the value of adjacent lands.

Right of Way through Township 51 South, Range 42 East,—

Through West half of Section 3, 12 acres at $15.00	$180.00
Through West half of West half Section 10, 12 acres, at $15	180.00
Through the Northwest quarter Section 15.6 acres, at $15	90.00
Through the Southwest quarter Section 15.6 acres at $10	60.00
Through West half of West half Section 22, 12 acres at $15	180.00
Through town of Hallandale.	
East of Block 2, including closed street at North end of Blk	135.00
East of Block 13 including closed street North end of Blk	210.00
East of Blk. 16 including closed street North end of Blk	120.00
East of Block 27	75.00
East of Block 30 including closed street North end of Blk	110.00
East of Block 39 including closed street at both ends of Blk	80.00
Station Grounds without improvements, east and adjoining right of way 1150′ by 50′	135.00
Through the West half of South-west quarter section 27, 6 acres at $15.00	90.00
Through the West half of West half Section 34, 12 acres at $15.00	180.00

Right of Way through Township 52 South, Range 42 East.

Through West half of Northwest quarter Section 3, 6 acres at $20.00	120.00
Through West half of Southwest quarter Section 3, 6 acres at $25.00	150.00
Station grounds at Ojus, without improvements, .83 acres	20.75
Through Section 10, 1½ acres at $20.00	30.00
Section house grounds at Ojus .51 acres	10.20
Through Section 9, 10 acres at $15.00	150.00
Through Northeast quarter Section 16, including Station grounds at Fulford, without improvements, 9 acres, at $25	225.00
Through South half Section 16, 6 acres at $15.00	90.00
Through East half Northwest quarter Section 21, 6 acres at $15.00	90.00
Through Southwest quarter section 21, 6 acres at $20.00	120.00
Through Northeast quarter of Northeast quarter section 29, 3 acres at $20.00	60.00
Through Southwest quarter of Northeast quarter of Section 29, 3 acres at $20.00	60.00
Through Northwest quarter of Southeast quarter, and Northeast quarter of Southwest quarter Section 29, including station grounds at Arch Creek, without improvements, 4.54 acres, at $60.00	272.40
Through Southeast quarter of Southwest quarter Section 29, 3 acres at $15.00	45.00
Through Northwest quarter section 32, 6 acres at $15.00	90.00
Through Northwest quarter of Northwest quarter of Southwest quarter Section 32, 1½ acres at $15.00	22.50
Through Southeast quarter of Northeast quarter of Southeast quarter Section 31, 1½ acres at $15.00	22.50
Through Southeast quarter of Southeast quarter of Section 31, 3 acres at $5.00	15.00

Right of Way through Township 53 South, Range 42 East.

Through North half of Northeast quarter Section 6, 3 acres at $15.00	45.00
Through Southwest quarter of Northeast quarter Section 6, 3 acres at $10.00	30.00
Through Northwest quarter of Southeast quarter Section 6, 3 acres at $10.00	30.00
Through Southeast quarter of Southwest quarter section 6, 3 acres at $10.00	30.00
Through Northeast quarter of Northwest quarter Section 7, 3 acres at $100.00	300.00
Through South half of Northwest quarter section 7, 3 acres at $100.00	300.00
Through Northeast quarter of Southwest quarter Section 7, 3 acres at $75.00	225.00
Through Southeast quarter of Southwest quarter section 7, 3 acres at $50.00	150.00
Through Northeast quarter of Northwest quarter Section 18, 3 acres at $50.00	150.00
Through North half of Southeast quarter of Northwest quarter section 18, 1.21 acres at $50.00	60.50
Through South half of Southeast quarter of Northwest quarter Section 18, 1.21 acres at $75.00	90.75
Through East half of Southwest quarter section 18, including station grounds and freight yards, 5.6 acres at $250.00	1400.00
Through Northwest quarter section 19, 3.63 acres at $250.00	907.50
Through Lot 6, section 19, 3 acres at $300.00	900.00
Through Lot 7, section 19, excepting the South 3 Chains and 1 link, 2.55 acres at $300.00	765.00
Through South 3 chains and 1 link of Lot 7, Section 19, 2 tenths acres	200.00
Through subdivision "A" Town of Buena Vista, including station grounds comprising lots 7-8-9-21-22-23 Block "A"	700.00

Right of Way through Township 53 South, Range 41 East.

Through Northeast quarter of Northeast quarter section 25, 2¼ acres at $300.00	675.00
Through Southeast quarter of Northeast quarter section 25, 3 acres at $250.00	750.00
Through Northeast quarter of Southeast quarter of section 25, 3 acres at $250.00	750.00
Through Southeast quarter of Southeast quarter section 25, 3 acres at $200.00	600.00
Through the Northwest quarter of Northeast quarter of Northeast quarter Section 36, .75 acres at $200.00	150.00
Through West half of Northeast quarter section 36, 6 acres at $200.00	1200.00

Right of Way through subdivision of Government Lot 2, Section 36, Township 53 South, Range 41 East.

Between Blocks 4 and 5 including closed street to South	1170.00
Between Blocks 10 and 11 including closed street to South	1050.00
Between Blocks 18 and 19 including closed street to South	1137.50
Lots 3-4-5 and 6 of Block 19 at $175.00 each	700.00
East half of lot 7 of Block 19	80.00
Total valuation	$17,964.65

(Signed) Frederick S. Morse.

Sworn to and subscribed before me this 10th day of February, A. D. 1908, at Miami, Dade County, Florida. (Signed) D. S. Jones,

(Seal.) Notary Public.

My Commission expires Dec. 14, 1908.

[Endorsed]: Filed in evidence marked Petitioner's Exhibit 14, Jan'y 15, 1912.

EXHIBIT 16.

Valuation.

Fla. East Coast Ry. Right of Way in St. Johns County.

Parts of Section.	Sec.	T.	R.	Acres.	100ths.	Rate of Tax.	Valuation. per acre.	Amount
		5	28				3.00	
	2	5	28				10.00	
	11	5	28				10.00	
	13	5	28				4.50	
	37	5	28				5.00	
	45	5	28				5.00	
	24	5	29				3.50	
	19	5	29				40.00	
	41	5	29				3.00	
	30	5	29				2.50	
	29	5	29				2.50	
	32	5	29				2.50	
	33	5	29				2.50	
	4	6	29				5.00	
	45	6	29				3.00	
	50	6	29				35.00	
	51	6	29				35.00	
	52	6	29				30.00	
	53	6	29				30.00	
	36	6	29				20.00	
	49	6	29				49.00	
		7	30	see separate list.				
	41	7	29	" "	"			
	45	7	29	" "	"			
	43	7	29				35.00	
	23	7	29				35.00	
	22	7	29				25.00	
	27	7	29				25.00	
	55	7	29	see separate list.				
	34	7	29				5.00	
	33	7	29				5.00	
	4	8	29				5.00	
	8	8	29				25.00	
	17	8	29				25.00	
	18	8	29				4.00	
	19	8	29				10.00	
	30	8	29				60.00	
	25	8	28				175.00	
	36	8	28				20.00	
	35	8	28				50.00	
	2	9	28				25.00	
	3	9	28				20.00	
	10	9	28				200.00	
	9	9	28				200.00	
	8	8	28				200.00	

Parts of Section.	Sec.	T.	R.	Acres.	100ths.	Rate of Tax.	Valuation. per acre.	Amount
	17	9	28				350.	
	18	9	28				225.	
	18	10	28				50.	
	17	10	28				25.	
	20	10	28				100.	
	21	10	28				50.	
	22	10	28				10.	
	27	10	28				10.	
	26	10	28				10.	
	36	10	28				10.	
	31	10	29				20.	
	5	11	29				5.	
	8	11	29				5.	
	9	11	29				10.	
	16	11	29				15.	
	15	11	29				15.	
	14	11	29				15.	
	23	11	29				20.	
	24	11	29				20.	
	25	11	29				25.	
	30	11	30				20.	
	31	11	30				25.	
	32	11	30				15.	
	5	12	30				10.	
	4	12	30				10.	
	10	12	30				15.	
	15	12	30				20.	
	14	12	30				15.	
	23	12	30				10.	
	24	12	30				15.	
	25	12	30				20.	
	36	12	30				50.	
	31	12	31				10.	
	32	12	31				5.	

Valuation of Fla. East Coast R/W in St. Johns County, Fla.

Parts of Section		Sec.	T.	R.	Acres. 100ths.	Rate of Tax.	Valuation.	Am't.
From County Line to M. P. 19		3	5	28	1.01		3.00	3.03
M. P. 19 to	20	3	5	28	12.12		3.00	36.36
20	21	3-2	5	28	0.63		3.00	1.89
(Durbin)		11			11.49		10.00	114.90
					7.53		10.00	75.30
21	M. P. 22	11-13	5	28	4.09		4.50	18.40
		14			0.50	No Deed	4.50	2.25
22	23	13-37	5	28	7.44		4.50	33.48
					4.68		5.00	23.40
23	24	24-45	5	28-29	.57		3.50	1.99
(Woodland)		19-41			2.78		5.00	13.90
					5.11	No Deed	40.00	204.40
					1.77		40.00	70.80
24	M. P. 25	41-30	5	29	5.76		3.00	17.28
					5.76	No Deed	2.50	14.40
					.60		2.50	1.50
25	26	29-32	5	29	4.27		2.50	10.67
					7.85	No Deed	2.50	19.62
26	27	32-33	5-6	29	0.16		2.50	0.40
		4			7.50	No Deed	2.50	18.75
					4.46	" "	5.00	22.30
27	28	4 45	6	29	6.56	" "	5.00	32.80
(Sampson)		50			2.29		3.00	6.87
					3.27		35.00	114.45
28 to	M. P. 29	50	6	29	12.12		35.00	424.20
29	30	50	6	29	12.12		35.00	424.20
30	31	50-51	6	29	12.12		35.00	424.20
31	32	51-50	6	29	4.25		35.00	148.75
(Magnolia)					7.87		30.00	236.10
32 to	M. P. 33	50-53	6	29	6.20		35.00	217.00
		36			4.00		30.00	120.00
					1.32		20.00	26.40
33	34	36-49	6	29	9.84		20.00	196.80
					.16		40.00	6.40
34	34 & 830′	49	6	29	1.25		40.00	50.00

From M. P. 34 & 830′ to M. P. 38 & 200′ taken care of in separate sheets.

From			Sec.	T.	R.	Acres.		Valuation.	Am't.
M. P. 38-200′ to 39			43	7	29	10.03		35.00	351.05
						2.56		35.00	89.60
39 to 40			43-23	7	29	3.69	No Deed	25.00	92.25
			22-27			3.97	" "	25.00	99.25
40	41		27-55	7	29	3.92	" "	25.00	98.00
						8.20		25.00	205.00
41	42		55-34	7	29	11.62		5.00	58.10
			33			.60	No Deed	5.00	3.00
42	43		33-4	7-8	29	10.05		5.00	50.25
43	44		4-5-8	8	29	3.05		5.00	15.25
						8.26		25.00	206.50
44	45	(Hurds)	8-17	8	29	9.09		25.00	227.25
						2.52		25.00	63.00
45	46		17-18	8	29	5.14		4.00	20.56
			19			4.46		10.00	44.60
46	47		19-30	8	29	10.10		10.00	101.00
						2.02	No Deed	60.00	121.20
47	48	(Elkton)	25	8	28	13.55		175.00	2371.25
						2.15		175.00	376.25
48	49	(Armstrong)	25-36	8	28	2.95	No Deed	200.00	59.00
			35			1.50	" "	50.00	75.00
						5.52	" "	50.00	276.00
						5.62		50.00	281.00
49	50		35-2-3	8-9	28	4.00		25.00	100.00
						1.50	No Deed	20.00	30.00
50	51		3	9	28	12.12		20.00	242.40
						.46	No Deed	20.00	9.20
51	52		3-10-9	9	28	11.66	" "	200.00	2332.00
						1.00		200.00	200.00
52	53		9-8-17	9	28	5.42		200.00	1084.00
						3.40		350.00	1190.00
						8.05		350.00	2817.50
53	54	(Hastings)	17-18	9	28	3.76		225.00	846.00
54	Putnam County Line		18	9	28	6.06		225.00	1363.50
						3.03	No Deed	225.00	681.75
County Line to M. P. 67 (Yelvington)			18	10	28	4.70	No Deed	50.00	235.00
M. P. 67 to 68			18-17	10	28	8.61	" "	50.00	430.50
						3.51	" "	25.00	87.75
68	69	(Roy)	20-21	10	28	10.10	" "	100.00	1010.00
						2.02	" "	50.00	101.00
69	70		21-22	10	28	11.62		50.00	581.00
						.50		10.00	5.00
70	71		22-27	10	28	12.12		10.00	121.20
71	72		27-26	10	28	12.12		10.00	121.20
72	73		26-36	10	28	2.45	No Deed	10.00	24.50
						9.67		10.00	96.70
73	74		36-31	10	28-29	4.20		10.00	42.00
						7.92		20.00	158.40
						5.90		20.00	118.00
74	75		31-5	10-11	29	4.72		5.00	23.60
						1.50	No Deed	5.00	7.50
75	76		5-8	11	29	12.12		5.00	60.60
						8.55		10.00	85.50

From			Sec.	T.	R.	Acres.	Valuation.	A'mt.
M. P. 76 to	77		9	11	29	3.57 No Deed	10.00	35.70
						1.00	10.00	10.00
77	78		9-16	11	29	4.59	15.00	68.85
			15			6.53	15.00	97.95
						7.21	15.00	108.15
78	79		15-14	11	29	2.45 No Deed	15.00	36.75
			23			2.46	20.00	49.20
79	80	(Taylor-sons)	23	11	29	12.12	20.00	242.40
						1.00	20.00	20.00
80	87	(Neoga)	23-24	11	29	2.20	20.00	44.00
						5.72	25.00	143.00
						2.48	25.00	52.00
81	82		25-30	11	29-30	4.10	20.00	82.00
			31			3.03	25.00	75.75
82	83	(Espanola)	31-32	11	30	5.00	25.00	125.00
						.50 No Deed	25.00	12.50
						5.62	15.00	84.30
						3.02	15.00	45.30
83	84		32 5-4	11	30	2.30 No Deed	15.00	34.50
						6.84	10.00	68.40
84	85		4	12	30	12.12	10.00	121.20
85	86		4-10	12	30	8.68	10.00	86.80
						3.44	15.00	51.60
						6.18	15.00	92.70
86	87	(Bunnells)	10-15	12	30	4.74	20.00	94.80
			14			1.20 No Deed	20.00	24.00
87	88		14-23	12	30	8.11	15.00	121.65
						3.51	10.00	35.10
						.50 No Deed	10.00	5.00
						6.88	10.00	68.80
88	89		23-24	12	30	3.20	15.00	48.00
			25			2.04	20.00	40.80
89	90		25	12	30	12.12	20.00	242.40
						1.82	20.00	36.40
90	91	(Dupont)	25-36	12	30-31	1.30	50.00	65.00
			31			9.00	10.00	90.00
91 to County Line, (91-3800')			31-32	12	31	7.50	10.00	75.00
						1.22	5.00	6.10
								26374.45

1

Florida East Coast Railway Company.

List of lots or parts of lots not leased or rented and terminal facilities, belonging to the Florida East Coast Railway Company, and reserved for railroad purposes:

St. Johns County.
New Augustine.
Right of way.

	Value.
Fract. lot 1, Blk. 30 and Fract. lot 4, Blk. 29, N. of Ry. R/W & Railroad yards.	
Fract. lot 4, Blk. 29, S. of Ry	240.
South 80 ft. lot 3, Blk. 20 Triangular Strip E. of said lot 3 and triangular strip in N. part	
Lot 1, Blk. 29	1200.
Lot in N. W. cor. lot 3, Blk. 20	250.
Lot 1, Block 38	150.
Lot 2, Block 38	150.
Lot 3, Block 38	150.
Lot 1, Block 56	
Lot 2, Block 56	
Lot 3, Block 56	
North 40 ft. lot 4, Block 10 E. of Shell road	500.
Tract N. W. of "Alligator Hole" Mason	600.
S. ½ Lot 4, Block A	500.
	3,740.00

2

	Value.
All lot 3, block 65 S. of N. line of R/w	
N. ½ of lot 6, block 64	
N. part of lot 4 blk. 73 being 75′ on E. and 125 on W.....	150.
Strip 50′ at W. line Palmer Ave. running E'ly 600′ bounded on N. by N. E. Mahr and land F. E. C. Ry on E. by land of F. E. C. Ry. S. by N. line Blk. 1 and 10	
and W. by line Palmer Ave.	500.
Lot 1, Block 29, except triangular strip off N. end of lot	250.
Lot 5, Block 38	
Lot 6, Block 38.....	300.
S. ½ lots 2 and 3 Blk. 29 being 400′ on N. and S. and 100′ on E. and W.	250.
Lot 4, Block 38	150.
Lot 2, Block 65	150.0
Lot 1, Block 65 excepting lot 40′ by 90′ in S. W. corner.....	50.
Lot 200′ wide S. of main track from lot 3, block A. runs East to Sebastian River,.....	200.
Car Sheds.	
Lot 3, Block A	100.
N/½ lot 4, Blk A, 96-½′ by 200′.....	500.
Pump and Tank.	
N. 50′ Lot 4, Blk. 1 (or 1).....	400.
	3,000.00

3

	Value.
Middleton tract 16-½ acres N. of Ry. on Marsh W. of S. Sebastian River	900.
Strip of land 125′ wide Northerly and Southerly being 200′ long on its N. line (W. of preceding) in Tp. 7, R. 29 E.	500.
Right of Way and R. R. Yards.	
Strip North of lots 4, 5, 6, Block 10,	300.
R/W and R. R. Yards.	
Lot 200 ft. by 125 ft. at 37 Mile Post N. of Ry. and 176 ft. E. of Savage St.	400.
Block 47 Sand Pit	800.
St. Johns County.	
Magnolia Grove.	
E. 10 acres of S. 20 chains of Sec. 51-6-29 being all lying East of line 50′ of Railway center	250.
Section House.	
Also 100 x 200′ W. side of R/W in Sec. 50-6-29. $25.00 per acre. 46/100 acres	11.50
St. Augustine.	
Lot in Township 7, Range 30, bounded N. by Orange St. S. by King St., E. Malaga St. and W. by Sebastian River	160,000.00
New Hospital Lot.	
400′ wide S. of King St. and W. from Ribera St. to Sebastian River	54,800.00
Right of Way.	
In Sec. 44-7-30 (new line) Land 50′ wide and 211′ long in Sec. 44-7-30 (new line)	700.00
	218,661.50

4

	Value.
All Sec. 57-7-30 West of extension of N'ly and S'ly line which is 560 ft. W. from W. line of Grant St. measured along S. line of Sec. 57	1,000.00
All Perpall Grant Sec. 45 and 46 W. of a N'ly and S'ly line 337' W'ly from W. line Grant St. measured on S. line Perpall St. and 586.8' W'ly from West line of Grant St. measured on N. line of Sanchez St.	1,450.
All E. 1-2 Lot 11, Blk. 10, Sec. 46 W. of N'ly and S'ly line running through a point 345' W. of Grant St. measured on E. line 50' E. of new location of Ry.	450.
Hurds Station.	
150 Right of way in E. ½ of Sec. 8-8-29 $25.00 per acre. 4.54 acres..	113.50
Hastings.	
1 pc. land for siding 49' x 679' E. R/W 1 pc. land for siding 54' x 775' E. R/W 1 pc. land for Agt's. house 100' x 110—350. per acre. 1.98 acres....	693.00
St. Johns County.	
Sand Pit.	
10 acres. 335' wide East of Right of Way. across W-½ of N. W. ¼ of Sec. 2-9-28 at $20.00 per acre	200.00
Holy Branch Station.	
N. 20 acres across N. W. ¼ of N. W. ¼ Sec. 10-9-28. all N. of Branch, at $50.00 per acre,	1,000.00
Deep Creek Saw Mill Siding.	
S. ½ being 20 acres across N. E. ¼ Sec. 9-9-28 at $25.00 per acre..	500.00
	5,406.50

5

	Value.
Tocoi Junction.	
Section House Lot, reserved by Land Dept. 100/200 ft. in E. ½ of N. W. ¼ of N. E. ¼ Sec. 27-7-29—48/100 acres at $30.00 per acre, 46/100 acres	13.80
Yelvington Section House.	
Lot 100 x 200 ft. in S. W. ¼ of N. W. ¼ Sec. 18-10-28 of Ry. 48/100 acres at $50.00 per acre	24.00
Neoga.	
E. side of N. ½ of N. W. ¼ Sec. 28-11-29, Station and Sidings $50.00 per acre, 50 x 1900'. 2.18 acres	109.00
Espanola Station.	
50' by 1960 E. side 2.25 acres at $25.00 per acre	56.25
Bunnell Station.	
Lot 132' by 561' in E. ½ of N. E. ¼ Sec. 31-11-30 at $20.00 per acre. 1.7 acres	34.00
Reserved by Land Dept. Lot 100' by 1200' in N. ½ of N. E. ¼ Sec. 15-12-30 E. side of R/W. $20.00 per acre. 2.75 acres	55.00
Dupont Station.	
Lot 50' x 750' side in S. E. cor. Sec. 25 and N. E. cor. of Sec. 36-12-30, $50.00 per acre. 86/100 acres	43.00
A strip of land 100' wide across the land of Elihu Vedder Sec. 56-57—30E. (cor. 2 ac.)	1,350.00
The Northerly portion of H. S. Robinson Grant Sec. 56-7-30	5,000.00
Two strips of land of Eslepa Grant, Sec. 44, T. 7, R. 30	3,000.00
R/W S. side of Orange St. North to City line 4,320 ft. at $50.00 per acre	5,000.00
Gov. lot No. 3, Sec. 36, T. 6 R. 29, Vestibule Y. and Coal bins, 45 acres	1,612.00
	247,105.05

[Endorsed]: Filed in evidence marked Petitioner's Exhibit 16. Jan'y 15, 1912.

1 EXHIBIT 17.

Affidavit of Fred'k. S. Morse.

State of Florida }
County of Dade } ss

I hereby certify that on this day of January, 1912, personally appeared before me, a Notary Public, Fred'k. S. Morse, a real estate agent at Miami, Fla., who is known to me to be a person worthy of credit and well posted as to the value of lands between the Miami River at Miami, Florida, and the town of Homestead, Florida, who being first duly sworn, deposes and says that according to his judgment he estimates the following lands owned by the Florida East Coast Railway Company to have been worth about January, 1912, as follows: These estimates are made according to the value of adjacent lands.

Right of Way 100' through that part of Miami lying south of the Miami River.

18th St. closed and strip between 18th St. and river with riparian rights	$4000.00
Between Blocks 38 and 39	1400.00
19th Street closed	233.00
Between Blocks 52 and 53	1400.00
Between Blocks 56 and 57	1400.00
21st Street Closed	200.00
Between Blocks 70 and 71	1200.00
22nd Street Closed	200.00
Between Blocks 74 and 75	1200.00
23rd Street Closed	200.00
Between Blocks 85 and 86	1200.00
24th Street Closed	200.00
Between 89 and 90	1200.00
25th Street Closed	200.00
Between Blocks 94 and 95	1200.00
26th Street Closed	200.00
Between Blocks 96 and 97	1200.00
27th St. closed and Triangle west of Block 98	210.00
	$17,043.00

2

	$17043.00
Right of Way through remaining portion of T. 54 S., R. 41 E. Polly Lewis Grant including Station Grounds at South Miami, 13 acres at $100.00 per acre	1300.00
Jonathon Lewis Grant. 11 acres at $100.00 per acre	1100.00
Section 15. 13 acres at $50.00 per acre	650.00
Section 16. 12 acres at $35.00 per acre	420.00
East 12 chains of NW ¼ of NW ¼ of Sec. 21, 24 a. at $50.00 per a.	1200.00
Bal. R/W sec. 21 1 & ½ acres @ $50.00 per acre	75.00
SE ¼ NE ¼ NE ¼ of sec. 20 10 acres, Cocoanut Grove Station Grounds, at $75.00 per acre	750.00
N ¼ of S. W. ¼ of sec. 20. 40 acres at $50.00 per acre	2000.00
Bal R/W of sec. 20. 13 acres @ $35 per acre	455.00
Section 19. 1 & ½ acres at $35.00 per acre	52.50
Section 30. 14 acres @ $30.00 per acre	420.00
T. 54 S., R. 40 E.	
Section 25. 4 & ½ acres at $50.00 per acre	225.00
Section 36. R/W and Station Grounds at Larkins 12 & ½ acres at $35.00 per acre	437.50
Section 35. 8 & ½ acres @ $30.00 per acre	255.00
T. 55 S., R. 40 E.	
Section 2. R/W and Station Grounds at Kendal 15 acres at $30.00 per acre	450.00
Section 3. 3 & ½ acres @ $30.00 an acre	105.00
Section 10. 13 & ½ acres @ $30.00 an acre	405.30
Section 15. 15 & ½ acres with Station Grounds at Benson at $30.00 per acre	465.00
Section 16. 1 acre @ $30.00 per acre	30.00
Section 21. R/W and quarry property, 250 acres @ $30.00 per acre	7500.00
Section 28. R/W and Station Grounds at Rockdale, 18 acres at $35.00 per acre	630.00
Section 33. 1.5 acres @ $50.00 per acre	75.00
Section 32. North of Perrine, 2 & ½ acres at $100.00 per a.	250.00
R/W and Station Grounds at Perrine. Tract 175′ wide and 620′ long, lying between Blocks 20 and 29.	1600.00
	$37,893.30

3

Section 32 continued.		
	East Evergreen St. closed. 40′ by 175′	100.00
	The Tract 175′ wide by 950′ long, lying between Blocks 21 and 28	2400.00
	Hibiscus St. closed 40′ by 100′	60.00
	Lots 1 and 6 of Bk. 27	200.00
	Lot 3 of Bk. 24	200.00
	R/W South of Perrine 4 acres at $30.00 per acre	120.00
	T. 56 S., R. 40 E.	
Section 5.	13 and ½ acres @ $35.00 per acre	472.50
Section 6.	4 acres @ $35.00 per acre	140.00
Section 7.	14.5 acres @ $30.00 per acre	435.00
	T. 56 S., 39 E.	
Section 12.	4 acres @ $30.00 per acre	120.00
Section 13.	17 acres @ $30.00 per acre to Goulds Sta. Grounds	510.00
	Goulds Sta. Grounds and R/W 7 acres @ $100.00 per acre	700.00
	Balance of Section 8 acres @ $30.00 per acre	240.00
Section 14.	Small corner	.....
Section 23.	17 acres @ $30.00 per acre	510.00
Section 26.	4 acres @ $30.00 per acre	120.00
Section 27.	E. ½—18.5 acres @ $30.00 per acre	555.00
	SW ¼—5½ acres @ $30.00 per acre	165.00
Section 34.	6.5 acres @ $30.00 per acre	195.00
Section 33.	NE ¼—5 acres @ $30.00 per acre	150.00
	S. ½—16.5 acres @ $30.00 per acre	495.00
	T. 57 S., R. 39 E.	
Section 4.	10 acres @ $30.00 per acre	300.00
Section 5.	E. ½—18½ acres @ $30.00 per acre	555.00
	SW ¼—2 acres @ $30.00 per acre	60.00
Section 8.	14 acres @ $30.00 per acre	420.00
Section 7.	18.5 acres @ $30.00 per acre	550.00
Section 18.	R/W and Yard at Homestead 101.5 acres @ $50.00 per acre	507.50
	T. 57 S., R. 38 E.	
Section 13.	5.5 acres @ $50.00 per acre	275.00
		$6,297.30
		895.10
		48,248.30

[Endorsed]: Filed in evidence marked Petitioner's Exhibit 17. Jan'y 15. 1912.

Sheet No. 1.

EXHIBIT 18.

C. M. Dilzer.

VOLUSIA COUNTY.

			Sec.	T.	R.	Acres.		Valuation.	Amount.	
From County North line to M. P. 92			5	13	31	3.50		$8.00	$28.00	
From M. P. 92 to 93			5	13	31	12.12		8.00	96.96	
						2.50		8.00	20.00	
	93	94	8	13	31	9.62	No deed	8.00	76.96	
						11.12		8.00	88.96	
	94	95	16	13	31	1.00		8.00	8.00	
			16-21			3.03	"	8.00	24.24	
	95	96	22	13	31	9.09		8.00	72.72	
						7.72	"	8.00	61.76	
	96	97	22-27	13	31	4.40		8.00	35.20	
						10.92	"	8.00	87.36	
	97	98	27-26	13	31	1.20		8.00	9.60	
			26-35						——	609.76
	98	99	36	13	31	12.12	"	8.00	96.96	
						2.00		8.00	16.00	
	99	100	36-1-6	13-14	31-32	10.12	"	8.00	80.96	
	100	101								
Grant			38	14	32	12.12		8.00	96.96	
						9.00		8.00	72.00	
From	101	102	38-39	14	32	3.03		20.00	60.60	
						1.73		20.00	34.60	
	102	103	39-40	14	32	10.39	"	20.00	207.80	
	103	to Ormond	40	14	32	6.06	"	20.00	121.20	
From North line Sec. 42-14-32 to M. P. 105 Grant			42	14	32	2.42		25.00	60.50	
From M. P. 105 to Holly Hill North line to South line Holly Hill on Town sheets			42	14	32-33	11.00		25.00	275.00	
									——	1,128.58
Grant				14-15	33					
From South line 108 Holly Hill to North line 108 Daytona			42	15	33	4.00		50.00	200.00	
From North line 108 Daytona to Blocks 109 21, 22 (North line)			42	15	33	3.47		400.00	1,388.00	
From Blocks 21-22 to M. P. 110 (included in Town sheets)			42	15	33					
From M. P. 110 to 111 (included in Town sheets)			42	15	33					
From M. P. 111 to 112			42	15	33	11.72		50.00	586.00	
From M. P. 112 to 113						3.00	"	50.00	150.00	
Segui Grant			28	15	33	1.80		50.00	90.00	
						4.00		35.00	100.00	
From M. P. 113 to 114			33	15	33	12.12		25.00	303.00	
									——	2,817.00
										$4,555.34

Sheet No. 2. Volusia County (Continued.)

		Sec.	T.	R.	Acres.		Valuation.	Amount.	
From M. P. 114 to 115 Port Orange		4-3	16	33	10.00		25.00	250.00	
					1.84	No Deed	25.00	46.00	
					2.40	"	15.00	36.00	
From M. P. 115	116	3-10	16	33	9.72		15.00	145.80	
					3.03	"	15.00	45.45	
116	117	10-15	16	33	9.09		15.00	136.35	
117	118	15-22	16	33	12.12		15.00	181.80	
					5.56		15.00	83.40	
118	119	22-27	16	33	6.56		25.00	164.00	
119	120	27-34	16	33	12.12		15.00	181.80	
					5.20	"	15.00	78.00	
120	121	34-3-2	16-17	33	6.92		15.00	103.80	
					1.80	"	15.00	27.00	
121	122	2-1-12	17	33	10.32		15.00	154.80	
122	123	1-12	17	33	12.12	"	15.00	181.80	
					2.20	"	25.00	55.00	
123	124	38-40	17	33-34	2.40		25.00	60.00	
									$1,931.00
124	125	40-41	17	34					
In New Smyrna Sheet									
From M. P. 125 to 126		41-46	17	34					
In New Smyrna Sheet		50-51			3.00	"	15.00	45.00	
From M. P. 126 to 127		52	17	34	4.00		15.00	60.00	
		52-32			5.12		20.00	102.40	
			17	34	4.40	"	15.00	66.00	
From M. P. 127 to 128		33	17	34	7.72		15.00	115.80	
					4.40	"	15.00	66.00	
128	129	2-3	18	34	7.72		15.00	115.80	
129	130	2-11	18	34	12.12	"	15.00	181.80	
					9.12		10.00	91.20	
130	131	11	18	34	3.00		10.00	30.00	
		11-48			8.00		10.00	80.00	
131	132	13	18	34	4.12	"	10.00	41.20	
					2.30		10.00	23.00	
132	133	13-24	18	34	7.50	"	10.00	75.00	
					5.00		10.00	50.00	
133	134	24-25	18	34	6.00	"	10.00	60.00	
					11.32	"	15.00	169.80	
134	135	25-31	18	34-35	.80		15.00	12.00	
135	136	31-6	18-19	35	12.12		15.00	181.80	
136	137	6-7	19	35	10.01		15.00	150.15	
137	138	7-37	19	35	8.80		15.00	132.00	
138	139	37	19	35	12.12		15.00	181.80	
		37-19			.57		15.00	8.55	
139	140	30	19	35	11.55	"	15.00	173.25	
140	141	30-43	19	35	12.12	"	15.00	181.80	
									$3,458.35
									$5,389.35

Sheet No. 3. Volusia County (Continued).

			Sec.	T.	R.	Acres.		Valuation.	Amount.	
From M. P. 141 to Brevard Co. line			43-44	19	35	7.42		15.00	111.30	
A. & W. Branch. From New Smyrna to M. P. 1			19	17	34	1.80		15.00	27.00	
						6.60	No Deed	15.00	99.00	
			19-34			7.27		50.00	363.50	
From M. P.	1 to	2	43	17	33	4.85		15.00	72.75	
						3.00		50.00	150.00	
	2	3	43-14	17	33	4.90		30.00	147.00	
			14-15			1.45		30.00	43.50	
	3	4	22	17	33	9.70	"	15.00	145.50	
			22-21			3.03	"	15.00	45.45	
	4	5	16	17	33	4.00	"	10.00	40.00	
						9.09	"	5.00	45.45	
	5	6	16-17	17	33	12.12	"	5.00	60.60	
						6.00	"	5.00	30.00	
	6	7	17-18	17	33	6.12	"	5.00	30.60	
						6.06	"	5.00	30.30	
	7	8	18-13	17	33-32	6.06	"	8.00	48.48	
			13-14			10.52	"	8.00	84.16	
	8	9	23	17	32	1.60		8.00	12.80	
										$1,586.09
	9	10	23	17	32	12.12	"	8.00	96.96	
	10	11	22	17	32	12.12	"	8.00	96.96	
	11	12	22-21	17	32	12.12	"	8.00	96.96	
						2.00	"	8.00	16.00	
	12	13	21-20	17	32	10.12		8.00	80.96	
			20-29			7.37	"	8.00	58.96	
	13	14	30	17	32	4.75		8.00	38.00	
						7.26	"	8.00	58.08	
	14	15	30-31	17	32	4.86		8.00	38.88	
	15	16	36	17	31	12.12		8.00	96.96	
	16	17	35	17	31	12.12	"	8.00	96.96	
	17	18	34	17	31	12.12		15.00	181.80	
	18	19	33	17	31	12.12	"	15.00	181.80	
						6.00	"	25.00	150.00	
	19	20	32	17	31	6.12		25.00	153.00	
	21	21								
Thro Lake Helen			32-31	17	31	5.26		50.00	263.00	
						1.80	"	25.00	45.00	
From M. P.	21 to	22	31-36	17	31-30	6.48		25.00	162.00	
						9.88	"	25.00	247.00	
	22	23	35-6-1	17-18	30-31	1.65		25.00	41.25	
										2,196.53
										3,782.62

Volusia County (Continued).

			Sec.	T	R.	Acres.	Valuation.	Amount.
From M. P.	23 to	24	1	18	30	4.97	25.00	124.25
	23	24				4.00	400.00	1600.00
	24	25	1-2-11	18	30	7.58	400.00	3032.00
	25	26	2-3-10	18	30	11.22	15.00	168.30
						5.12 No Deed	15.00	76.80
	26	27	3-4-9	18	30	7.00	15.00	105.00
						3.09	15.00	46.35
	27	28	9-8	18	30	6.80	15.00	102.00

5,254.90

Sheet No. 1—4,555.34
Sheet No. 2—5,389.35
Sheet No. 3—3,782.62

$18,982.21

C. M. Dilzer.

Correction Sheet for Ormond and New Smyrna.

Parts of Section. R/W within town limits.	Valuation.	Amount.
Going North, from North line La Vega Sqr to North line Lincoln Ave. 50 x 750 ft., 4 lots 50 x 142 at $40.00 each,		$160.00
Going North, from North line Lincoln Ave to South line Grant lot 11½, 50 x 1850 ft., 12½ lots, 50 x 150, 2.12 acres, at $50.00		106.00
Going North through (across) Grant Lot 12,620 ft., 4 lots, 50 x 155, 0.71 acres, at $50.00 per acre,		35.50
Going South from South line Grant lot 3½ to North line Grant Lot 1, 103 ft., 6 lots 50 x 170, 1 18/100 acres, at $25.00 each,		150.00
Going South from South line La Vega Sq. to North line Grant Lot 3½, 960 ft., 6½ lots, at $30.00,		195.00
Lot A and E 390 ft. Lot B in Grant Lots 1-13-14, 17 1/3 acres, at $50.00 per acre		866.60
		$1,513.10

New Smyrna.

All of Blocks 34 & 35, Andrews Subdivision, 24 Lots at $400 per lot	$9,600.00
All of Block 36 Andrews Subdivision 12 Lots at 250 per lot	3000.00
All of Blocks 37 & 38, Andrews Subdivision, 24 Lots at $200 per lot	4800.00
All of Block 39, Andrews Subdivision, 12 Lots at $150 per lot	1800.00
800 ft. N. & S. by 600 ft. E. & W. lying West of Blocks 36 & 37 & to West line of Ambros Hall Grant, 64 lots, at $125.00 per lot,	8000.00
Land within "Y" equal to 24 lots at $50.00 each,	1200.00
	$28,400.00
"Y" track to River from E. line of Orange St. Andrews Sub—440 ft., equal to 8 lots, $500 to $100.00	1550.00
From S. end of "Y" to S. line of Cavado Grant 1725 ft., 11½ lots at $75 each	862.50
From S. line Cavado Grant to S. line Pedro De Calla, 510 ft., 3½ lots at $75.00	262.50
From S. line Pedro de Calla to S. line Seymour Pickett, 2775 ft., 18½ lots at $50.00	925.00
From N. line Canal St. to N. S. Julia St., 370 ft. 2½ lots, at $400.00	1066.00
From N. side Julia St. to Washington Ave., 370 ft., 2½ lots, at $300	750.00
From N. side Washington Ave., to Mary Ave., 730 ft., 5 lots at $250	1250.00
From N. side Mary Ave. to Rennoc Lane, 780 ft., 5 lots at $200	1000.00
From N. side Rennoc Lane to S. line Blk. 11, New Smyrna L. & I. Co. Sub., 800 ft., 3 1/5 lots, at $200.00	640.00
From S. line Blk. 11, N. S. L. & I. Co. Sub. through the sub. on curve and angle to North line of town line, 2200 ft., 14 2/3 lots, at $50 each	733.30
Continuing on angle from S. line Blk. "D" to N. line of Block "D" & N. line of N. S. L. & I. Co. sub., 400 ft., 2 2/3 lots, at $50.00	133.30
200 ft. across Fulford Subdivision, 200 ft., 1 1/3 lots, at $200 each	266.60
	16,039.20
	1,513.10
	28,400.00
	$45,952.30

Titusville Branch.
Volusia County.

		Sec.	Twp.	R.	Acres.	Valuation.	Amt.
					6.00 No Deed	8.00	48.00
From M. P. 15 to M. P. 16		32-31	19	34	6.12	8.00	48.96
					6.00 "	8.00	48.00
16	17	31-30	19	34	6.12	8.00	48.96
17	18	30-25			6.96 No Deed	8.00	55.68
		24	19	34-33	5.16	8.00	41.28
					9.32 No Deed	8.00	74.56
18	19	24-23	19	33	2.80	8.00	22.40
19	20	23-22	19	33	12.12 No Deed	8.00	96.96
20	21	22-21	19	33	12.12 "	8.00	96.96
21	22	21-16					
		17	19	33	12.12 "	8.00	96.96
22	23	17-18	19	33	12.12 "	8.00	96.96
23	24	18-13	19	33-32	12.12 "	8.00	96.96
24	25	13-14	19	32	12.12 "	8.00	96.96
25	26	14-15	19	32	12.12 "	8.00	96.96
26	27	15-16	19	32	12.12 "	8.00	96.96
27	28	16-17	19	32	12.12 "	8.00	96.96
28	29	17-18	19	32	10.40 "	8.00	83.20
		7			.86	8.00	6.88
29	30	18-7	19	32-31	6.48	8.00	51.84
		12			1.49 No Deed	8.00	11.92
30	31	12-11	19	31	7.66	8.00	61.28
					3.10 No Deed	8.00	24.80
31	32	11-10	19	31	7.90	8.00	63.20
					3.08 No Deed	8.00	24.64
32	33	10-9	19	31	9.04	8.00	72.32
					1.95 No Deed	8.00	15.60
33	34	9-4-5	19	31	9.29	8.00	74.32
34	35	5-6	19	31	5.01	8.00	40.08
35	36	6	19	31	0.82	8.00	6.56
							$1,797.12

Volusia County.

			Station, etc.	Value each piece
	Ormond.			
Y	446	s-80	200′ by 86′ N. E. cor. Grand Lot 10 of Henry Young Grant	$50.00
6	1	A6	In La Vega Plat. 400 ft. N. of Tomoka Ave., bounded E. by White St. T. 14, R. 32, Run N. 380 by 464′ W.	2,160.00
5	585	A8	Lots 1, Blk. 4 La Vega	75.00
"	"	"	" 3, " " " "	75.00
"	"	"	" 5, " " " "	75.00
"	"	"	" 7, " " " "	75.00
"	"	"	" 9, " " " "	75.00
"	"	"	" 10, " " " "	75.00
"	"	"	" 11, " " " "	75.00
"	"	"	" 12, " " " "	75.00
6	9	M26	" 1-2-4 Carantonera Blk. (3 Lots)	225.00
"	"	"	" 8 " "	75.00
			South of Granada Ave.	
			Lot 4 Alhambra Block	75.00
			8 " "	75.00
17	18	A1	Lot on River front, South of Granada Ave. (Old Station)	1,000.00
			Station, etc.	
36	338	A-50	Lot 1, Blk. 3 La Vega	50.00
"	"	"	" 2, " " " "	50.00
"	"	"	" 3, " " " "	50.00
"	"	"	" 4, " " " "	50.00
"	259	A-51	" 2, " 4 " "	75.00
"	"	"	" 4, " " " "	75.00
"	"	"	" 6, " " " "	75.00
"	"	"	" 8, " " " "	75.00
6	5	P-18	E. 350′ West of Railway R/W, of Grant lot 3½ and lots 12 and 13 of Liberia in grant lot 3½	400.00
Y	273	G-33	W. 340′ of E. 1640′ (for R. of Way) of Grant lot 11½ to retain	100.00
	Holly	Hill.		
			Station.	
2	201	M-65	E. ½ of Lot 16, Blk. 36, Fleming Subdivn.	100.00
"	"	"	E. ½ of Lot 29. Blk. 36, Fleming Subdivn.	50.00
			Right of Way (5 acres)	
"	193	M-17	All Blk. 21½ Exc. Lots 16, 17, 18	250.00
			Mason and Carswell Subdiv.	150.00
Y	Daytona.		Tank and Pump. 56 to 75 Lots.	
Y	599	B-4	Lot 17, Blk. 3, Colemans Addn.	1,800.00
(22	165	H-40	W. ½ of lot 1, Blk. 22 (Frt. House)	3,500.00
(21	259		W. ½ of lot 8, Blk. 22	4,200.00
			Station.	
22	"	J-21	W. ½ lot 1 and Blk. 23	2,800.00
"	"	"	N. W. cor. lot 8, Blk. 23	100.00
			Side track.	
Y	152	R-12	Lot 8, Block 24	2,000.00
QC1	596	C-87	Lot 1, " 25	1,000.00
				$21,210.00

Volusia County.

Port D	Orange Bk.	Section Page	House.	
Q. C.	1	384	W. end lots 7 & 8 Block L.....	$300.00
	19	482	Lot 6, Block N.	500.00
			New Smyrna.	
			All Blocks 34 & 35 Andrews sub-div. 24 Lots at $400 per lot.....	9,600.00
			All Block 36 Andrews sub-div. 12 Lots at $250 per lot.....	3,000.00
			All Blocks 37 & 38 Andrews sub-div. 24 Lots at $200.00 per lot.....	4,800.00
			All Block 39 Andrews sub-div. 12 Lots at $150.00 per lot.....	1,800.00
			800 ft. N. & S. by 600 ft. E. & W. lying West of Blocks 36 & 37 and to West line of Ambros Hull Grant 64 lots at $125.00 per lot	8,000.00
			Land within "Y" equal to 24 lots at $50.00 a lot	1,200.00
			"Y" track continued to River from E. line of Orange St. Andrews sub-div. 1440 ft. equal to 8 lots $500 to $100.....	1,550.00
Going South.			From S. end of "Y" to S. line Cavado Grant 1725 ft. equal to 11½ lots at $75.00 each	862.50
50' Right Way.			From S. line Cavado Grant to S. line Pedro De Calla Grant 510 ft. equal to 3½ lots at $75.00 each	262.50
			From S. line Pedro Da Calla Gt. to S. line Seymour Pickett 2775 ft. equal to 18½ lots at $50.00 each	925.00
Going North.				
50' Right Way.			From N. line Canal St. to Julia St. 370 ft. 2½ lots at $400.00 each	1,000.00
			From N. side Julia St. to Washington Ave. 370 ft. equal to 2½ lots at $300.00 each	750.00
			From N. side Washington Ave. to Mary Ave. 730 ft. equal to 5 lots at $250 ea..	1,250.00
			From N. line Mary Ave. to Ronnoc Lane 780 ft. equal to 5 lots at $200.00.....	1,000.00
			From N. line Rannoc Lane to S. Line Blk. 11, New Smyrna L. & I. Co. sub-div. 800 ft. equal to 3 1/5 lots at $200.00 ea..	640.00
			From S. line Blk. 11 N. S. L. & I. Co.'s sub-div. through the sub. on curve and angle to N. line of town line 2200 ft. equal to 14 2/3 lots at $50.00 ea.....	733.30
			Continuing on angle from S. line Block "D" to N. line of Block "D" & N. line of N. S. L. & I. Co. sub. 400 ft. equal to 2 2/3 lots at $50.00 each.....	133.30
			200 ft. across Fulford subdivision 200 ft. equal to 1 1/3 lots at $200 each.....	266.60
	30	292	1000' by 1089' east end of L. Todd Grant in Sec. 40-17-33 and Sec. 37-17-34.....	750.00
			Oak Hill.	
	20	443	SW cor. NW ¼ of NE ¼ Sec. 6-19-35	
	26	475	and near SE cor. NE ¼ of NW ¼ 8/10 acres at $25	20.00
	26	22	20 acres in NE cor. Sec. 37-19-35 at $15....	300.00
	34	51	Strip 200' wide over N. 14 chains of NE ¼ of NE ¼ Sec. 7-19-35 and NW 5 acres of NE ¼ of NE ¼ Sec. 7-19-35 at $40.00 per acre	200.00
				$39,843.20

Volusia County.

D	Bk.	Page		
			Spruce Creek.	
	19	371	Siding, etc., Part of Block 12	
			Osteen.	
	1	353	Right of Way W. ½ of NE ¼ of SE ¼ Sec. 11-19-31	
			Orange City, Old Station.	
	10	583	S. of Graves Ave. E. of Carpenter Ave. 615′ E. and W. by 125′ N. and S. except 50′ x 75′ in SW cor.....	$500.00
			Freight House.	
	23	463	N. 25′ of Lots 9, 10	200.00
	23	358	Lot 90′ x 200′ in SE ¼ of N. ½ of Lot 4	
	28	575	W. of Pennsylvania Ave. in Sec. 1-18-30..	50.00
			Lake Helen.	
	6	125	Strip 800′ long, being 100′ wide 700′ and 36′ wide for 100′ being on E. side Right of Way in SW ¼ of SW¼ of Sec. 14-17-33	1,125.00
			Ormond.	
Right of Way within town limits.				
			Going North. From N. line La Vega Sqr. to N. line Lincoln Ave. 50 x 750 ft. equals 4 lots 50 x 142 at $40.00 ea.....	160.00
			Going North from N. line Lincoln Ave. to S. line Grant lot 11½, 50 x 1850′ equals 12½ lots 50 x 150 equals 2.12 acres at $50.00	106.00
			Going North through (across) Grant lot 12 620′ equals 4 lots 50 x 155 equals 0.71 acres at $50.00 per acre.....	35.50
			Going South from South line Grant lot 3½ to N. line Grant Lot 1, 1030 ft. equals 6 lots 50 x 170′ equals 1.18 acres at $25.00 per acre	150.00
			Going South from S. line La Vega Sq. to North line Grant lot 3½, 960 ft. equals 6½ lots at $30.00	195.00
			Lot A and 390 ft. Lot B in Grant Lots 1-13-14, equals 17 1/3 acres at $50.00 per acre	866.60
			Blake.	
			Station Grounds.	
	34	486	50′ on W. side and all on E. side of Ry. in S. 405 ft. of Govt. Lot 2, 100′ on W. side and all on E. side in NE cor. Lot 3 for 275 ft. and 100′ x 800′ on W. side and 50′ x 1150′ on E. side lot 4, in Sec. 28-15-35	950.00
			Near Orange City.	
	36	11	W. ½ of SW ¼ of SW ¼ Sec. 3-18-30....	75.00
	36	16	SE ¼ of SE ¼ of SE ¼ Sec. 4-18-30....	150.00
	36	79	E. ½ of NE ¼ of SE ¼ of SE ¼ Sec. 4-18-30	75.00
				$4,638.10

1 Volusia County.

Sections, Townships and Ranges Through Which F. E. C. Ry. Right of Way Passes.

Parts of Section .	Sec.	T.	R.	Valuation per acre
	5	13	31	$8.00
	8	"	"	"
	16	"	"	"
	21	"	"	"
	22	"	"	"
	27	"	"	"
	26	"	"	"
	35	"	"	"
	36	"	"	"
	1	14	31	"
	6	14	32	"
Grant	38	"	"	"
"	39	"	"	20.00
"	40	"	"	20.00
" Note (1)	41	"	"	
" Note (2)	42	"	"	
"	37	15	33	)
"	38	"	"	)
"	39	"	"	)
"	40	"	"	)
Segui Grant		"	"	)
	29	"	"	)
	33	"	"	)
	4	16	"	)
	3	"	"	)
	10	"	"	)
	15	"	"	)
	22	"	"	)
	27	"	"	)
Grant	39	"	"	"
	34	"	"	15.00
	3	17	"	15.00
	2	17	"	15.00
Grant	40	"	"	15.00
	1	"	"	15.00
	12	"	"	15.00
A & W. Branch.				
	24	17	33	15.00
	43	"	"	50.00
	14	"	"	30.00
	15	"	"	15.00
	22	"	"	15.00
	21	"	"	10.00
	16	"	"	5.00
	17	"	"	5.00
	18	"	"	5.00

2 Parts of Section.		Sec.	T.	R.		Valuation
Main Line.	Note (3)	7	17	34		15.00
	Grant	38	17	34	)	
	"	39	17	34	)	
	"	40	17	34	)	
	"	41	"	"	)	
	"	44	"	"	) Note (4)	
	"	46	"	"	)	
	"	47	"	"	)	
	"	49	"	"	)	
	"	50	"	"		20.00
	"	51	"	"		20.00
	"	52	"	"		15.00
		32	"	"		15.00
		33	"	"		15.00
	A. & W. Branch.					
	Grant	41	17	34	Note (5)	
		19	"	"		30.00
Main Line.		3	18	34		15.00
		2	"	"		15.00
		11	"	"		10.00
	Grant	48	"	"		10.00
		13	"	"		10.00
		24	"	"		10.00
		25	"	"		10.00
		30	"	35		15.00
		31	"	"		15.00
		6	19	"	)	15.00
		7	"	"	) Note (7)	15.00
	Grant	37	"	"	)	15.00
		19	"	"		15.00
		30	"	"		20.00
	Grant	43	"	"		15.00
	A. & W. Branch.	13	17	32		8.00
		14	"	"		8.00
		23	"	"		8.00
		22	"	"		8.00
		21	"	"		8.00
		20	"	"		8.00
		29	"	"		8.00
		30	"	"		8.00
		31	"	"		8.00

3

Parts of Section.	Sec.	T.	R.		Valuation
A. & W. Branch.	36	17	31		8.00
	35	"	"		8.00
	34	"	"		15.00
	33	"	"		15.00
	32	"	"		25.00
Note (6)	31	"	"	Lake Helen	50.00
	36	17	30		25.00
	35	"	"		25.00
	6	18	31		25.00
	1	18	30		25.00
Note (8)	1	"	"		400.00
	3	"	"		15.00
	4	"	"		15.00
	9	"	"		15.00
Titusville Branch.	30	19	34		8.00
	31	"	"		8.00
	32	"	"		8.00
	18	19	33		8.00
	17	"	"		8.00
	16	"	"		8.00
	21	"	"		8.00
	22	"	"		8.00
	23	"	"		8.00
	24	"	"		8.00
	25	"	"		8.00
	7	19.	32		8.00
	17	"	"		8.00
	16	"	"		8.00
	15	"	"		8.00
	14	"	"		8.00
	13	"	"		8.00
	6	19	31		8.00
	5	"	"		8.00
	4	"	"		8.00
	9	"	"		8.00
	10	"	"		8.00
	11	"	"		8.00
	12	"	"		8.00

[Endorsed] Filed in evidence marked Petitioner's Exhibit 18, Jany. 15, 1912.

EXHIBIT 19.

Valuation of Buildings
of the
Florida East Coast Railroad Company,
made for the
Trust Co. of North America,
N. Y. City.

Office of W. P. Richardson, Contractor
& Builder, Jacksonville, Fla.

[Filed in Evidence marked Petitioner's Exhibit 19, Jany. 15, 1912.]

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(1) Valuation of Buildings of the Florida East Coast R'wy Co. Made for the Trust Co. of North America, N. Y. City.

Office of W. P. Richardson, Contractor & Builder—Jacksonville, Fla.

Main Line.

South Jacksonville:—			
	Transfer Shed	$ 7300.00	
	Section House	1050.00	
	Station Building	3884.00	
	Section House, Mayport Division	1050.00	
	Track Scales	1000.00	
	Section Man's House	450.00	
	Section Tool House, Mayport Div.	110.00	
	Section Tool House	110.00	
	50,000 Gal. Tank	1350.00	
	Water Softening Plant	6600.00	
	Dynamo & Pump House	12000.00	
	Agent's Cottage	1680.00	
	Pump House	215.00	
	Yard Master's Office	1440.00	
	Cottage on St. John's Ave.	1000.00	
	Car Inspector's Office	475.00	$39714.00
Greenland:—			
	Station Building	600.00	
	20,000 Gal. Tank	1000.00	
	Boiler House	225.00	1825.00
Bayard:—			
	Station Building	2900.00	
	Agent's Cottage	2490.00	
	Laborer's House	400.00	
	Cook House	75.00	
	Tool House	110.00	
	Section House	1100.00	7075.00
Durbin:—			
	Station Building	525.00	525.00
Woodland:—			
	Section Foreman's House	1100.00	
	Section Labor House	400.00	
	Section Tool House	115.00	1615.00
			$50754.00

(2) Main Line.

		Brought For'd.	$50754.00
Magnolia:—			
	Section Foreman's House	$1100.00	
	Section Labor House	400.00	
	Section Tool House	115.00	
	Section Cook House	75.00	1690.00
St. Augustine:—			
	Old Paint Shop	9000.00	
	New Paint Shop	9600.00	
	Car Shop	16529.00	
	Machine Shop	14912.00	
	Blacksmith Shop	1985.00	
	Boiler & Air Compressor House	8953.00	
	Iron House	375.00	
	Coal Chute	5825.00	
	Roadway Warehouse	700.00	
	M. M. Office	2400.00	
	Dynamo Building	5000.00	
	Storehouse	8500.00	
	Pipe & Casting Room	900.00	
	Upholsterers Bldg.	2550.00	
	Toilet 1	1076.00	
	Toilet 2	175.00	
	Platform to Toilets	145.00	
	Station Building	4850.00	
	Roadway Storehouse	9900.00	
	W. C. B. Warehouse	14580.00	
	Freight House	6450.00	
	50,000 Gal. Tank	1500.00	
	Water Softening Plant	6500.00	
	Buffet Room	3800.00	
	Station Building & Office	25720.00	
	Office Building	23900.00	
	Round House	23237.50	
	Motor Car House	125.00	
	Four Other Houses same cost	500.00	
	Steel & Concrete Turn Table	7500.00	
	Car Shed	8000.00	
	Brick Oil House	1000.00	
	Waste House	625.00	
	Two Story Warehouse	7600.00	
	Hospital Building	12000.00	
	One Building 14′ 6″ x 72′	1725.00	
	Two Buildings 35′ x 73′ 6″	9500.00	
	One Building 32′ x 80′	4000.00	
	Two Story Cottage	3100.00	
	Transfer Stable 1	14000.00	
	Transfer Stable 2	3000.00	282737.50
New St. Augustine:—			
	Small Car Shed	4576.00	
	Large Car Shed	14000.00	
	20,000 Gal. Tank	1000.00	
	Pump House	150.00	
	Roadway Dept. Warehouse	225.00	
	Steam Shovel House	1150.00	
	Hoisting Engine Store House	40.00	
	Supervisor's Office	800.00	
	50,000 Gal. Tank	1500.00	
	Pump House	400.00	
	Two Boilers & Two Pumps	1250.00	25091.00
			$360272.00

(3) Main Line.

		Brought For'd.	$360272.00
Hurds:—			
	Station Building	$ 175.00	175.00
Elkton:—			
	Station Building	500.00	500.00
Armstrong:—			
	Station Building	660.00	
	Platforms around same	226.00	886.00
	Section Foreman's House	1100.00	
	Section Laborers' House	400.00	
	Section Tool House	115.00	1615.00
Holly Branch:—			
	Station Building	200.00	200.00
Hastings:—			
	Station Building	3853.00	
	Freight Station	1345.00	
	Agent's Cottage	2500.00	7698.00
Toccoi:—			
	Section Foreman's House	1100.00	
	Section Laborers' House	400.00	
	Section Tool House	115.00	
	Section Cook House	75.00	1690.00
East Palatka:—			
	Station Building	1650.00	
	50,000 Gal. Tank	1350.00	
	Freight Station	775.00	
	Car Shed	3750.00	
	Oil House	150.00	
	Track Scales	1100.00	
	Section Foreman's House	1100.00	
	Section Laborers' House	400.00	
	Section Tool House	115.00	
	Section Cook House	75.00	10465.00
Palatka Bridge:—			
	Bridge Tender's House	900.00	
	Oil House	50.00	950.00
Yelvington:—			
	Station Building	160.00	
	Section Foreman's House	1100.00	
	Section Laborers' House	400.00	
	Section Tool House	115.00	
	Section Cook House	75.00	1850.00
			$386301.00

(4) Main Line.

		Brought For'd.	$386301.00
Neoga:—			
	Station Building	$ 990.00	
	Section Foreman's House	1100.00	
	Section Laborers' House	400.00	
	Section Cook House	115.00	
	Section Tool House	75.00	
	Pumper's Cottage	1150.00	
	Pump House	500.00	
	50,000 Gal. Tank	1350.00	5680.00
Espanola:—			
	Station Building	450.00	
	Section House	1100.00	
	Section Laborers' House	400.00	
	Section Tool House	115.00	
	Section Cook House	75.00	2140.00
Bunnell:—			
	Station Building	1033.00	1033.00
Dupont:—			
	Station Building	3828.00	3828.00
Harwood:—			
	Station Building	150.00	
	Section Foreman's House	1100.00	
	Section Laborers' House	400.00	
	Section Tool House	115.00	1765.00
Ormond:—			
	Bridge Tender's House	450.00	
	Warehouse on Wharf	250.00	
	Station	8300.00	
	Freight Station	1260.00	10260.00
	Section Foreman's House	1100.00	
	Section Laborers' House	400.00	
	Section Tool House	115.00	1615.00
Holly Hill:—			
	Station Building	335.00	335.00
Kingston:—			
	Station Building	400.00	
	Pumper's Cottage	1150.00	
	20,000 Gal. Tank	1000.00	
	Pump House	500.00	3050.00
Daytona:—			
	Station & Pavilion	11229.00	
	Freight Station	5470.00	
Blake:—			
	Station Building	625.00	625.00
			$416632.00

(5) Main Line.

		Brought For'd.	$416632.00
Port Orange:—			
	Station Building	$1100.00	
	Freight Station	600.00	
	Section Foreman's House	1100.00	
	Section Laborers' House	400.00	
	Section Tool House	115.00	
	Section Cook House	75.00	3390.00
Hawks Park:—			
	Station Building	625.00	625.00
Oak Hill:—			
	Station Building	1100.00	
	Agent's Cottage	1150.00	
	Freight Station	777.00	
	Section Foreman's House	1100.00	
	Section Laborers' House	400.00	
	Section Tool House	120.00	
	20,000 Gal. Tank	1000.00	
	Pump House	400.00	
	Pumper's Cottage	1000.00	7047.00
Shiloh:—			
	Station Building	140.00	140.00
E. Aurantia:—			
	Section Foreman's House	1100.00	
	Section Laborers' House	400.00	
	Section Tool House	115.00	
	Extra Men's House	400.00	2015.00
New Smyrna:—			
	Station Building	4175.00	
	Freight Station	700.00	
	Track Scales	1000.00	
	Coal Chute	6000.00	
	Yard Master's Lamp Room	125.00	
	Car Inspector's House	125.00	
	50,000 Gal. Tank	1350.00	
	Car Shed	4467.00	
	Round House	6275.00	
	Section Foreman's House	1100.00	
	Section Laborers' House	400.00	
	Section Tool House	115.00	
	Extra Men's House	400.00	
	Water-Softening Plant	6600.00	
	Oil House	150.00	33082.00
			$462931.00

(6) Main Line.

		Brought For'd.	$462931.00
Titusville:—			
	Station Building	$4950.00	
	20,000 Gal. Tank	950.00	
	Car Inspector's House	200.00	
	Oil House	150.00	
	Track Scales	1000.00	
	Freight House	650.00	
	Fish House	365.00	
	Car Shed	6600.00	
	Section Tool House	120.00	
	1 —Two Story Cottage	1176.00	
	2 —One Story Cottage	850.00	
	3 —One Story Cottage	550.00	
	Pump House	500.00	
	4 —Two Story Cottage	1700.00	
	5 —Two Story Cottage	735.00	
	6 —One Story Cottage	500.00	
	7 —One Story Cottage	800.00	
	8 —One Story Cottage	1350.00	
	10—One Story Cottage	500.00	
	11—One Story Warehouse	1500.00	
	12—One Story Warehouse	1500.00	26646.00
			$489577.00

(7) Main Line.

		Brought For'd.	$489577.00
Frontenac:—			
	Station Building	$ 200.00	
	Section Foreman's House	1100.00	
	Section Labor House	400.00	
	Section Tool House	115.00	1815.00
Sharpes:—			
	Station Building	1600.00	1600.00
City Point:—			
	Station Building	1100.00	
	Freight Station	775.00	1875.00
Cocoa:—			
	Express Co. Building	310.00	
	Station Building	2200.00	
	Platforms	990.00	
	Agent's Cottage	1600.00	
	Freight Station	775.00	
	Freight House on Dock	2200.00	
	Poarchers Warehouse	900.00	
	Wharf	500.00	
	Express Office on River	150.00	
	O. K. Wood property	3800.00	13425.00
Rockledge:—			
	Station Building	6480.00	
	20,000 Gal. Tank	1000.00	
	Pump House	400.00	
	Station House	1100.00	
	Section Labor House	400.00	
	Section Tool House	115.00	
	Pumper's Cottage	1100.00	10595.00
Coquina:—			
	Station Building	600.00	600.00
Bonaventure:—			
	Station Building	600.00	
	Section House	1100.00	
	Section Labor House	400.00	
	Section Tool House	115.00	
	Section Cook House	75.00	2290.00
Eau Gallie:—			
	Station Building	2050.00	
	Freight Station	700.00	
	Warehouse on Wharf	2040.00	
	Agent's Cottage	1600.00	
	Fish House	400.00	
	#2 Warehouse on Wharf	2050.00	
	Section House	1100.00	
	Section Labor House	400.00	
	Section Tool House	115.00	
	Section Cook House	75.00	10530.00
			$532307.00

(8) Main Line.

		Brought For'd.	$532307.00
Melbourne:—			
	Station Building	$2050.00	
	Freight House	625.00	
	50,000 Gal. Tank	1350.00	
	Boiler House	400.00	
	Pumper's Cottage	1100.00	
	Agent's Cottage	1100.00	
	Section House	1100.00	
	Section Labor House	400.00	
	Section Tool House	115.00	
	Section Cook House	75.00	8315.00
Tillman:—			
	Station Building	550.00	550.00
Malabar:—			
	Station Building	550.00	550.00
Valkaria:—			
	Station Building	550.00	550.00
Grant:—			
	Station Building	1066.00	
	Section Foreman's House	1100.00	
	Section Labor House	400.00	
	Section Labor House #2	400.00	
	Section Tool House	115.00	3081.00
Micco:—			
	Station Building	550.00	550.00
Roseland:—			
	Station Building	550.00	
	20,000 Gal. Tank	1000.00	
	Boiler House	400.00	
	Pumper's Cottage	1100.00	3050.00
Sebastian:—			
	Station Building	3320.00	
	Section Foreman's House	1100.00	
	Section Labor House	400.00	
	Section Labor House #2	400.00	
	Section Tool House	120.00	5340.00
Wabasso:—			
	Station Building	550.00	550.00
Quay:—			
	Station Building	1150.00	1150.00
			$555993.00

(9) Main Line.

		Brought For'd.	$555993.00
Gifford:—			
	Station Building	$ 175.00	
	Section Foreman's House	1100.00	
	Section Men's House	400.00	
	Section Tool House	120.00	
	Section Men's House #2	400.00	2195.00
Vero:—			
	Station Building	1750.00	1750.00
St. Lucia:—			
	Station Building	1850.00	
	Section Foreman's House	1100.00	
	Section Labor House	400.00	
	Section Men's House	400.00	
	Section Men's House #2	400.00	
	Section Cook House	75.00	4225.00
Oslo:—			
	Station Building	175.00	175.00
Fort Pierce:—			
	Station Building	3787.00	
	Freight Station	1985.00	
	Car Inspector's Office	230.00	
	Yard Master's Office	100.00	
	Coal Chute	6000.00	
	Sand House	150.00	
	Engine House	6600.00	
	Oil House	120.00	
	50,000 Gal. Tank	1350.00	
	Pump House	400.00	
	Boiler House	200.00	
	Track Scales	1000.00	
	Wrecking Car Shed	1170.00	
	Car Repair Shop	560.00	
	Pumper's Cottage	1150.00	
	Section Foreman's House	1100.00	
	Section Men's House	400.00	
	Section Men's House #2	400.00	
	Section Tool House	120.00	26822.00
White City:—			
	Station Building	1540.00	1540.00
Eldred:—			
	Station Building	1540.00	1540.00
Walton:—			
	Station Building	550.00	550.00
Eden:—			
	Station Building	1350.00	1350.00
			$596140.00

(10) Main Line.

		Brought For'd.	$596140.00
Ruxton:—			
	Section Foreman's House	$1100.00	
	Section Labor House	400.00	
	Section Labor House #2	400.00	
	Section Tool House	120.00	2020.00
Chetelah:—			
	Station Building	550.00	550.00
Jensen:—			
	Freight Station	1348.00	1348.00
Rio:—			
	50,000 Gal. Tank	1350.00	
	Pump House	400.00	
	Pumpers' Cottage	1100.00	2850.00
Stuart:—			
	Bridge Tenders' Cottage	1100.00	
	Station Building	300.00	
	Platforms	870.00	
	Express Shed	100.00	
	Freight House	1190.00	
	Agents' Cottage	1150.00	46710.00
Aberdeen:—			
	Section House	1150.00	
	Section Labor House	400.00	
	Section Labor House #2	400.00	
	Section Tool House	120.00	2070.00
Gomez:—			
	Station Building	175.00	175.00
Hobe Sound:—			
	Station Building	2100.00	2100.00
	Section Foreman's House	1100.00	
	Section Mens' House	400.00	
	Section Tool House	120.00	16220.00
Likely:—			
	Station Building	175.00	
	50,000 Gal. Tank	1350.00	
	Pumpers' House	400.00	
	Pumpers' Cottage	1100.00	3025.00
West Jupiter:—			
	Section Foreman's House	1100.00	
	Section Tool House	120.00	
	Old Boiler House	125.00	
	Old Pumpers Cottage	1100.00	
	Warehouse on Wharf	1450.00	
	Station Building	500.00	
	Agents Two-Story Cottage	2750.00	7135.00
			$665753.00

(11) Main Line.

Rivera:—		Brought For'd	$665753.00
	Station Building	$ 550.00	550.00
West Palm Beach:—			
	Section Bungalow	2500.00	
	Supervisors' Tool House	125.00	
	Supervisors' Office	275.00	
	Oil House	200.00	
	Supervisors' Warehouse	310.00	
	Bridge Tenders' House	1175.00	
	Freight Station	8240.00	
	One House	135.00	
	Station Building	11600.00	
	50,000 Gal. Tank	1500.00	
	Track Scales	1000.00	
	Section Foreman's House	1150.00	
	Section Men's House	400.00	
	Section Tool House	120.00	
	Supply Foreman's House	120.00	
	Agents' Oil House	50.00	
	Bridge Tenders' Oil House	25.00	
	Agents' Cottage	1800.00	
	Fish House #1	350.00	
	Fish House #2	500.00	
	Old Passenger Station	1675.00	
	Old Style Section House	950.00	
	Old Two-Story House	1200.00	
	Healy Fish House	325.00	35725.00
Palm Beach:—			
	Passenger Station	2650.00	
	Car Shed	3300.00	
	Platforms	2230.00	
	Express Building	3750.00	
	Platforms	770.00	
	Car Shed for Car #90	1250.00	
	Breakers' Passenger Platform	1850.00	
	Sleeping Car Platform	295.00	
	Section Foreman's House 305 Mile P.	1150.00	
	Section Men's House	400.00	
	Section Tool House	120.00	
	Laborers' Sleeping Cottage	400.00	18165.00
Lantana:—			
	Station Building	1350.00	1350.00
Hypoloxo:—			
	Station Building	775.00	775.00
Boynton:—			
	Station Building	3060.00	
	Agents' Cottage	1150.00	
Del Ray:—			
	Station Building	3075.00	
	Section Foreman's House	1150.00	
	Section Labor House	400.00	
	Section Tool House	125.00	
	Agents' Cottage	1150.00	5900.00
			$728218.00

(12) Main Line

		Brought For'd	$728218.00
Yamato:—			
	Station Building	$ 625.00	
	50,000 Gal. Tank	1500.00	
	Pump House	1550.00	3675.00
Boca Ratone:—			
	Station Building	1100.00	1100.00
Deerfield:—			
	20,000 Gal. Tank	1000.00	
	Pump House	400.00	
	Pumpers' Cottage	1100.00	
	Station Building	3800.00	
	Section Foreman's House	1150.00	
	Section Men's House #1	400.00	
	Section Tool House	125.00	
	Section Men's House #2	400.00	
	Section Men's House #3	400.00	
	Section Men's House #4	400.00	
	Section Men's House #5	400.00	9575.00
Pompano:—			
	Station House	1100.00	
	Section Foreman's House	1150.00	
	Section Men's House #1	400.00	
	Section Tool House	125.00	
	Section Men's House #2	400.00	
	Section Men's House #3	400.00	
	Section Men's House #4	400.00	
	Section Men's House #5	400.00	4375.00
Ft. Lauderdale:—			
	Station Building	3900.00	
	Agents' Cottage	1150.00	5050.00
Dania:—			
	Station Building	1100.00	
	50,000 Gal. Tank	1350.00	
	Pump House	400.00	
	Pumpers' Cottage	1150.00	
	Section Foreman's House	1150.00	
	Five Section Laborers' Houses	2000.00	
	Agents' Cottage	1150.00	8300.00
Hallendale:—			
	Station Building	1150.00	1150.00
Ojus:—			
	Station Building	1150.00	
	Section Foreman's House	1150.00	
	Section Men's House	400.00	
	Section Tool House	125.00	
	Section Men's House #2	400.00	
	20,000 Gal. Tank	1000.00	
	Boiler House	400.00	
	Pumpers' Cottage	1150.00	5775.00
			$767218.00

(13) Main Line

	Brought For'd	$767218.00
Fullford:—		
Station Building	$1150.00	1150.00
Arch Creek:—		
Station Building	1100.00	1100.00
Biscayne:—		
Station Building	650.00	650.00
Little River:—		
Station Building	1150.00	1150.00
Lemon City:—		
Station Building	1750.00	1750.00
Buena Vista:—		
Station Building	1750.00	1750.00
Miami:—		
Passenger Station	14000.00	
50,000 Gal. Tank	1350.00	
Water-softening Plant	6600.00	
Boiler House	400.00	
Pumpers' Cottage	1500.00	
Main Line Frt. House	6300.00	
Track Scales	1000.00	
Engine House	5000.00	
Coal Chute	5825.00	
New Freight House	6000.00	
Car Inspectors' House	560.00	
Oil House	425.00	
Section Foreman's House	1150.00	
Section Foreman's House #2	1150.00	
Section Men's House	400.00	
Section Tool House	125.00	
Warehouse on River Wharf	6500.00	
Commissary	8500.00	
Porters' Barracks	3150.00	
Army Warehouse	2500.00	
Express Building	1750.00	74185.00
Larkin:—		
Station Building	200.00	200.00
Cocoanut Grove:—		
Station Building	5000.00	
Section Foreman's House	1150.00	
Section Men's House	1150.00	
Section Tool House	1150.00	
Agents' Cottage	2500.00	10950.00
Keys:—		
Station Building	200.00	
Ten Section Foremen Houses	5000.00	
Rock Crushing Plant	15000.00	20200.00
		$880303.00

(14) Main Line

		Brought For'd	$880303.00
Homestead:—			
	Station Building	$5300.00	
	Section Foreman's Bungalow	1500.00	
	Section Men's House	400.00	
	Section Tool House	125.00	
	Agents' Cottage	1500.00	8825.00
Black Point:—			
	20,000 Gal. Tank	1000.00	
	Boiler House	400.00	
	Pumpers' Cottage	1100.00	2500.00
Perrine:—			
	Station Building	5000.00	
	Section Foreman's Bungalow	1500.00	
	Section Men's House	400.00	
	Section Tool House	125.00	
	Agents' Cottage	1500.00	8525.00
	Total Valuation of Main Line		$900153.00
	[Add Daytona value omitted, p. 4	$16,699.00	
	Add Boynton values omitted, p. 11	4,210.00]	
			20,909.00
			$921,062.00

(15) Mayport Division

Mayport:—			
	Office on Wharf	$ 954.00	
	Passenger Station	2122.00	
	Coal Plant	27223.00	
	Wharf Tool House	90.00	
	Cement Warehouse	7500.00	
	Fish House	858.00	
	5 Laborers' Cottages @ $300.00	1500.00	
	Quarantine Boat House	1295.00	
	Agents' Cottage	2250.00	
	Bruce Two-Story Cottage	1750.00	45542.00
E. Mayport:—			
	Oil & Waste House	285.00	
	Section Foreman's House	1153.00	
	Laborers' House	400.00	
	Track Scales	1000.00	
	Water Softening Plant	6600.00	
	20,000 Gal. Tank	950.00	
	Station	640.00	
	Tool House #1	156.00	
	Tool House #2	110.00	11294.00
Burnside:—			
	Open Pavilion	400.00	400.00
Manhattan Beach:—			
	Pavilions & Bath House	8000.00	8000.00
Atlantic Beach:—			
	Station	9500.00	9500.00
Pablo Beach:—			
	Station Building	6278.00	
	Octagonal Building	4400.00	
	Rectangular Pavilion	990.00	
	Section House	1075.00	
	Section Laborers' House	400.00	
	Section Tool House	125.00	13268.00
San Pablo:—			
	Station Building	500.00	500.00
Centre Park:—			
	Station Building	900.00	900.00
Hogans:—			
	Station Building	859.00	859.00
St. Nicholas:—			
	Station Building	500.00	500.00
	Total Valuation Mayport Division		$90764.00

(16) San Mateo Branch.

San Mateo:—			
	Station Building	$2785.00	
	Freight Station	1180.00	
	Two Story Store Building	8620.00	
	One Story Store Room	1500.00	
	Agent's Cottage	1350.00	15435.00
	Total Valuation San Mateo Branch		$15435.00

(17) A. & W. Branch.

Glencoe:—		
Station Building	$ 250.00	
Section Foreman's House	1100.00	
Section Foreman's House	400.00	
Section Tool House	115.00	
Pump House	880.00	
Pumper's Cottage	400.00	$3145.00
Indian Springs:—		
Station Building	400.00	400.00
Rogers:—		
Section Foreman's House	1100.00	
Section Laborers' House	400.00	
Section Tool House	115.00	1615.00
Lake Helen:—		
Station Building	5719.00	5719.00
Twin Oaks:—		
Station Building	660.00	660.00
Orange City:—		
Station Building	1815.00	
Freight Station	1150.00	
Section Foreman's House	1100.00	
Section Laborers' House	400.00	
Section Tool House	115.00	3580.00
Total Valuation of A. & W. Branch		$15119.00

(18) Titusville Branch.

Osteen:—		
Station Building	$ 670.00	
Section Foreman's House	1100.00	
Section Laborers' House	400.00	
Section Tool House	115.00	$2285.00
Cow Creek:—		
Station Building	600.00	600.00
Maytown:—		
Station Building	250.00	
10,000 Gal. Tank	800.00	
Pump House	200.00	
Section Foreman's House	1100.00	
Section Laborers' House	400.00	
Section Tool House	115.00	2865.00
Turnbull:—		
Station Building	325.00	325.00
Mimms:—		
Station Building	1340.00	
Section Foreman's House	1100.00	
Section Laborers' House	400.00	
Section Tool House	115.00	2955.00
La Grange:—		
Station Building	450.00	450.00
Total Valuation of Titusville Branch		$9480.00

(19) Summary.

Total Valuation of Main Line	$900,153.00
Total Valuation of Mayport Division	90,764.00
Total Valuation of San Mateo Branch	15,435.00
Total Valuation of A. & W. Branch	15,119.00
Total Valuation of Titusville Branch	9,480.00
	$1,030,951.00
[Main Line values omitted, p. 14]	20,909.00
	$1,051,860.00

Valuation of Buildings of the Jacksonville Terminal Company.

W. P. Richardson, Contractor and Builder, Jacksonville, Fla.

Union Station, including train shed and platforms	$172,495.00
Express Shed	7,750.00
Union News Building	500.00
Oil House	700.00
Store Room	2,250.00
Total Valuation	$183,695.00

Note:

Union Station Building	$83,400.00
Train Shed	70,695.00
Platforms	18,400.00

EXHIBIT No. 20.

Real Estate Located on West Bay and West Forsyth Streets, Between Jefferson Street and Myrtle Avenue, Jacksonville, Fla.

Description.	Price.	
S. 93', Lot 1, Block 1	$21,000.00	
Lot 2, Block 1	21,250.00	
Lot 3, Block 1	16,000.00	
Lot 4, Block 1	21,000.00	
Lot 5, Block 1	12,600.00	
Lot 4, Frac. Block 9	17,572.00	
Frac. Blk. 9, Div. B	35,000.00	
Lot, 4, Blk. 5, Div. B	25,000.00	
S. 39', Lot 3, Blk. 3, Div. C	9,450.00	
N. ½ Lot 8, Blk. 6, Div. D	2,500.00	
		$181,372.00

Real Estate Located on West Bay and West Forsyth Streets, Between Jefferson Street and Myrtle Avenue, Jacksonville, Fla.

Description.	Price.	
Cor. Forsyth and Jefferson	$ 9,500.00	
Lot 5, Levin Johnson Tract	2,000.00	
Lot 4, Levin Johnson Tract	4,500.00	
Lot 6, Newton Mayor Tract	7,350.00	
Lots 4 and 5, Newton Mayor Tract	11,250.00	
Lots 1, 2, 5 and 6, Block 5, Division "B," LaVilla	15,000.00	
E. ½ Lot 3, Blk. 5, Div. B	3,000.00	
W. ½ Lot 3, Blk. 5, Div. B	3,150.00	
Lot 1, Block 6, Div. B	4,000.00	
Lot 2, Block 6, Div. B	3,500.00	
E. ½ Lot 3, Blk. 6, Div. B	1,500.00	
W. ½ of N. ½ Lot 3, Blk 6	4,725.00	
W. ½ of S. ½ Lot 3, Blk. 6	1,600.00	
E. ½ of Lot 1, Blk. 3, Div. C	3,100.00	
W. ½ of Lot 1, Blk. 3, Div. C	1,500.00	
E. ½ Lot 2, Blk. 3, Div. C	3,000.00	
W. ½ Lot 2, Blk. 3, Div. C	1,250.00	
N. 66 ft. Lot 3, Blk. 3, Div. C	4,100.00	
E. ½ Lot 2, Blk. 6, Div. D	800.00	
W. ½ Lot 2, Blk. 6, Div. D	2,000.00	
E. ½ Lot 3, Blk. 6, Div. D	1,500.00	
E. ½ of W. ½, Lot 3, Blk. 6	800.00	
E. 1/3 Lot 4, Blk. 6, Div. D	2,000.00	
W. ¼ Lot 3, Blk. 6, Div. D	800.00	
W. 2/3 Lot 4, Blk. 6, Div. D	1,000.00	
		$92,975.00

Real Estate Located on West Bay Street and West Forsyth Street Between Jefferson Street and Myrtle Avenue, Jacksonville, Fla.

Map No.	Name of Former Owner.	Description.	Price.	
30	Jacksv'le Term. Co.	Lots 1, 2, 3, Block 5 Lot 1, Part Lot 4, Block 6, Lot A6 or Lot 3, Block 11, Lot B6 or Lot 2, Block 11	$26,536.00	
		Lots 1, 4, 5, Block 11	8,000.00	
		Right of way 11/100 acres—Block 12	990.00	
		Lots 1, 2, 3, 4, 5, 6, 7, 8, Block 13.	15,450.00	
				$50,976.00

This includes land in Hanover Street between Bay and Forsyth Streets.

[Endorsed]: Filed in evidence marked Petitioner's Exhibit 20, Jan'y 15, 1912.

3rd Sheet—Statement Equipment.

1911			
June 30th	To New Equipment Purchased	83,665.69	
	By Balance		2,696,479.69
		3,116,536.93	3,116,536.93
July 1st	To Balance	2,696,479.69	
	" Equipment Purchased to November 30th, 1911, Not Closed into Equipment Account	289,086.48	
	Total November 30th, 1911	2,985,566.17	
		357,482.36	
		3,343,048.53	

Filed in Evidence Marked Petitioner's Exhibit Number 2. Mar. 12, 1912.

New Equipment Since January 1, 1912.

150 Flats . . } 50 Gondolas }	$142,336.07
1 Wrecking Crane	$16,466.79
7 Passenger Coaches (steel) } 3 Postal Cars (steel) } 4 Express Cars (steel) }	$198,679.50
Total Charges for Equipment	$357,482.36

Filed in Evidence Marked Petitioner's Exhibit Number 3. Mar. 12, 1912.

On Hand December 31st, 1911.

Shop Material	$237,206.09
Roadway "	76,805.73
Ties	23,349.06
Fuel	92,691.16
Stationery	19,244.49
Commissary Supplies	1,709.45
Rail	344,473.51
Total	$795,479.49

Filed in Evidence Marked Petitioner's Exhibit Number 5. March 12, 1912.

Detail of Betterment & Equipment

For Year Ending June 30th, 1907.

Betterments.		Equipment.	
Right of Way	16,860.01	Freight Cars	324,331.63
Bridges	48.67	Caboose Cars	1,581.16
Rail	55,589.02	Camp Cars	676.36
Buildings	74,013.51	Motor Cars	373.83
Docks & Wharves	317.49		
Track Laying & Surfacing.	20,235.29		
	167,063.99		326,962.98
			167,063.99
			$494,026.97

For Year Ending June 30th, 1908.

Betterments.		Equipment.	
Right of Way	5,273.37		
Buildings	70,148.47	Flat Cars	†4,528.00
Sidings	5,013.33		
Tools & Machy.	966.00		
Docks & Wharves	†121,653.57		
Bridges	11,892.13		
Rail	†130,307.90	All rail prior to July, 1907, was charged direct to betterments when purchased. Inventory was taken July 1st, 1907, and it was found that this amount had been charged to betterments in excess of amount actually put in track.	
	84,638.97		†4,528.00
	4,528.00		
	80,110.97		

For Year Ending June 30th, 1909.

Betterments.		Equipment.	
Right of Way	9,669.50		
Widening Cuts & Fills	1,282.35	Locomotives	225,149.65
Bridges	28,703.32	Pass Cars	†316,822.25
Rail	1,302.06		
Ballast	204,081.00		
Sidings	3,816.05		
Buildings	22,570.80		
Docks & Wharves	899.00		
Tools & Machy.	2,650.99		
	274,975.07		†91,672.60
	91,672.60		
	183,302.47		

†In red ink in copy.

Filed in Evidence Marked Petitioner's Exhibit Number 6. Mar. 12, 1912.

For Year Ending June 30th, 1910.

Betterments.		Equipment.	
Right of Way	†3,204.65		
Widening Cuts & Fills	376.00	Locomotives	108,439.51
Bridges	23,035.27	Freight Cars	†2,751.00
Rail	119,622.12	Work Cars	†725.00
Misc. Track Material	35,179.96		
Buildings	42,824.10		
Ballast	†540.00		
Sidings	19,007.94		
Tools & Machy.	900.00		
	237,200.74		
	104,963.57		104,963.51
	342,164.25		

For Year Ending June 30th, 1911.

Betterments.		Equipment.	
Right of Way	196,171.42	Flat Cars	†12,805.35
Widening Cuts & Fills	563.51	Locomotives	73,521.04
Bridges	855.93		
Rail	36,169.18		
Misc. Track Material	10,570.63		
Ballast	2,999.51		
Sidings	100,066.92		
Terminal Yards	37,224.13		
Buildings	43,043.20		
Docks & Wharves	1,868.06		
Tools & Machy.	205.80		
	430,638.29		
	60,715.69		60,715.69
	491,353.98		

From July 1st to November 30th, 1911.

Betterments.		Equipment.	
Right of Way	$11,464.08		
Buildings	52,140.97	Locomotives	$289,146.48
Sidings	98,790.82	Work Cars	525.00
Rail	41,922.97	Freight Cars	†585.00
Ballast	33,575.96		
Tools & Machy.	28,874.49		
Bridges	22,550.36		
New Telephone	22,821.09		
	312,140.74		
	289,086.48		289,086.48
	601,227.22		

†In red ink in copy.

Filed in Evidence Marked Petitioner's Exhibit Number 6-A. Mar. 12, 1912.

Estimated Freight and Passenger Earnings over Key West Extension (from Miami South) for eight months ending February 28th, 1911, and February 29th, 1912, based on percentage of Key West Extension mileage to total mileage operated.

	1911	1912	Increase
Freight	$218,531.25	$237,409.03	$18,877.78
Passenger	162,434.07	214,780.19	52,346.12
Total	$380,965.32	$452,189.22	$71,223.90

Estimated Freight and Passenger Earnings over Key West Extension (from Homestead South) for eight months ending February 28th, 1911, and February 29th, 1912, based on percentage of Key West Extension mileage to total mileage operated.

	1911	1912	Increase
Freight	$163,406.25	$181,710.58	$18,304.33
Passenger	121,459.71	166,676.18	45,216.47
Total	$284,865.96	$348,386.76	$63,520.80

Filed in Evidence Marked Petitioner's Exhibit Number 7. Mar. 12th, 1912.

Total of Pay Roll, Year 1911 ..... $1,345,502.39 Opr.
Number of Employees on Pay Roll, 1911 2,742

Wages.	1911
Trackmen	$208,523.40
Conductors	87,549.30
Trainmen	137,006.40
Machinists	46,546.80
Other Shopmen	329,013.63
Engineers	140,577.00
Firemen	58,650.90

Average Daily Compensation.	1911
Trackmen	$1.53 per day
Section Foremen	$58.90 per mo.
Boil[illegible]akers	39c per hour
Blac[illegible]iths	36½c per hour
Machinists	37 1/3c per hour
Carpenters—Shop Carpenters, 33⅓c per. hr., Roadway	$2.50 per day
Painters	$2.50 per day
Car Cleaners	14c per hour
Engine Wipers	13c per hour
Engineers	.0327 to .0448 per mile
Conductors	$110.00 to $150.00 per mo.
Trainmen	$1.73 to $3.07 per day

	1911
Cost of Ties	40c each
Cost of Lumber	$17.71 per thou.
Cost of Coal	$2.87 per ton

Filed in Evidence Marked Petitioner's Exhibit Number 8. Mar. 12, 1912.

Expenses Compared.

Years 1901 and 1907.

Total of Pay Roll, Year 1901	557,840.60	Operation
Total of Pay Roll, Year 1907	979,025.51	do
Number of Employees on Pay Roll, 1901	991	
Number of Employees on Pay Roll, 1907	1,542	

Wages.	1901	1907
Trackmen	$129,736.80	$164,835.10
Conductors	22,000.20	48,184.30
Trainmen	31,831.20	66,181.00
Machinists	26,478.00	38,343.20
Other Shopmen	102,898.80	241,441.10
Engineers	46,001.40	75,684.20
Firemen	20,160.00	32,468.05

Average Daily Compensation.	1901	1907
Trackmen	$1.00 per day	$1.40 per day
Section Foremen	$45.00 per mo.	$53.50 per mo.
Boiler Makers	32½c per hour	37½c per hour
Blacksmiths	30c per hour	34¾c per hour
Machinists	30c per hour	34-8c per hour
Carpenters	25c & 27c per hour	26¾ & 28c per hour
Painters	25c per hour	26¾c per hour
Car Cleaners	$1.20 per day	$1.30 per day
Engine Wipers	$1.00 per day	$1.30 per day
Engineers	2c to 4c per mile	2c to 4-8c per mile
Conductors	$80.00 to $90.00 per mo.	$96.00 to $149.00 per mo.
Trainmen	$1.70 & $1.90 per day	$1.85 to $2.15 per day

	1901	1907
Cost of Ties	40c each	55c each
Cost of Lumber	$12.00 per thous.	$18.30 per thous.
Cost of Coal	$3.20 per ton	$3.32 per ton.

Filed in Evidence Marked Petitioner's Exhibit Number 9. Mar. 12, 1912.

Freight Revenue Derived From the Following Commodities:

From July 1st, 1900, to May 31st, 1906.

Year.	Naval Stores.	Oranges, Etc.	Pines.	Veg.	Class P.
1901	6,064.72	10,867.67	66,258.92	92,624.27	118,102.44
1902	10,227.35	14,856.22	76,413.63	128,738.91	116,343.99
1903	13,355.00	15,056.07	148,275.60	99,426.96	133,958.28
1904	18,830.45	29,072.46	98,015.01	209,183.87	173,176.57
1905	22,269.50	32,141.56	88,733.37	107,281.03	134,901.15
1906	37,365.30	68,468.17	60,311.27	158,458.96	207,812.71

From July 1st, 1907, to June 30th, 1911.

Year.	Naval Stores.	Oranges, Etc.	Pines.	Veg.	Class P.
1907	24,055.43	51,434.83	159,364.49	190,011.91	64,813.35
1908	25,683.77	67,604.18	153,343.96	271,285.19	59,318.52
1909	24,800.52	120,023.24	270,889.82	352,295.33	154,643.38
1910	24,395.11	147,100.55	146,354.69	581,778.07	149,598.55
1911	31,618.75	171,741.63	119,390.70	488,387.05	249,892.34

Filed in Evidence Marked Petitioner's Exhibit Number 10. Mar. 12, 1912.

Re.—Petition for injunction, etc. In the Commerce Court of the United States, Term 1911.—Florida East Coast Railway Company, a corporation, Petitioner, vs. United States, Respondent.

Tallahassee, Fla., March 9, 1912.

I Hereby Certify:

I have carefully compared figures and statistics published in attached copy of Petition in above case on pages 45 and 46, under the head of Atlantic Coast Line Railway, with those as given in Annual Report of Atlantic Coast Line Railroad Company filed with the Florida Railroad Commission for years ending June 30, 1910, and June 30, 1911, and find that said figures and statistics in said copy correspond with those found in above Reports under the corresponding headings.

I have also compared figures and statistics in said copy on page 46, under the head of Seaboard Air Line Railroad, with those under corresponding headings in Annual Report of Seaboard Air Line Railway for the years ending June 30, 1910, and June 30, 1911, on file with the Florida Railroad Commission, and find that they are correct except as noted on page 46 of said copy.

That the above mentioned Reports are filed with this Commission under oath of the respective officials of said railroad companies as to the correctness of information contained therein.

J. WILL YON,
Secretary,
Railroad Commission, State of Florida.

Atlantic Coast Line Railway.

Commodity.	1910 Whole Tons	1911 Whole Tons
Cotton	8,558	4,634
Fruit and Vegetables	297,744	249,111
Lumber	558,267	532,261
Naval Stores	118,072	121,225
Other Products of Forest	468,890	407,243
Phosphate and other Products of Mines	1,583,467	1,621,261

Earnings.	1910	1911
Freight	$ 4,739,496.15	$ 4,773,325.06
Passengers	1,860,882.88	2,172,049.95
Mail Revenue	157,832.44	157,579.26
Express	317,633.60	326,777.00
Other Passenger Train Revenue	471.32	2,194.33
Excess Baggage	19,265.48	24,062.43
Total—State operating revenue	$ 7,238,976.25	$ 7,600,710.29
Total—Entire Line operating revenue	29,810,267.78	31,622,449.24

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Seaboard Air Line Railroad.

Commodity.	1910 Whole Tons	1911 Whole Tons
Cotton	6,975 [6,973]*	7,020
Fruit and Vegetables	205,891	216,120 [216,123]*
Phosphate and other Products of Mines	430,612	955,903
Lumber	649,969	582,972 [582,772]*
Other Forest Products	238,076	240,442
Naval Stores	128,917	130,005 [130,605]*

Earnings	1910	1911
Freight	$ 2,252,180.04 [2,752,120.04]*	$ 3,227,651.05
Passenger	1,229,691.53	1,455,543.11
Excess Baggage	13,397.39	15,187.50
Mail	78,928.42 [73,978.42]*	76,907.34
Express	151,666.09	162,033.78
Parlor and Chair Car	7,248.40 [7,242.40]*	7,231.70
Other Passenger Train Revenue	356.12	2,883.94
Total Revenue—State	$ 4,513,651.06 [4,515,657.06]*	$ 5,438,601.07
Total Revenue—Entire Line	$19,662,527.27	$21,782,004.61

*Figures enclosed in brackets are corrections in ink in copy.

Filed in Evidence Marked Petitioner's Exhibit Number 11. Mar. 12, 1912.

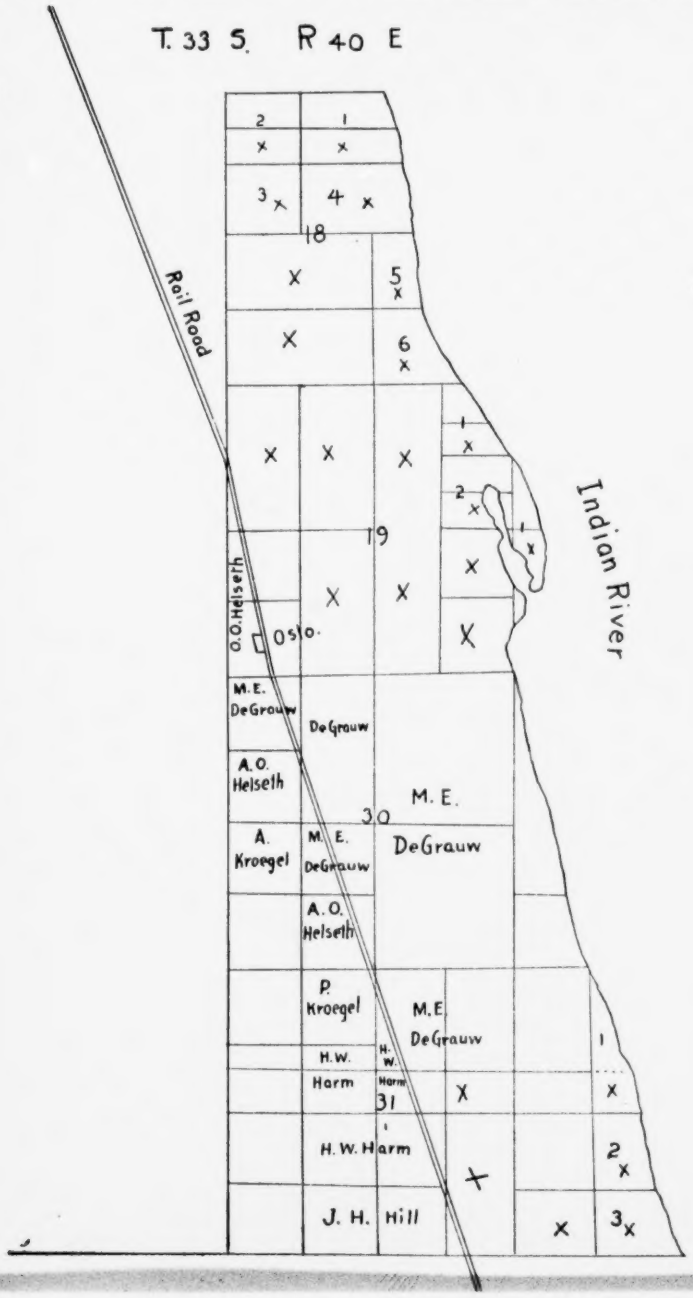
Equipment, November 30, 1911.

Locomotives		96	
Cars in Passenger Service.			
Coaches, All Classes	55		
Combination Cars	4		
Parlor Cars	2		
Baggage, Express & Postal Cars	34		
Other Cars in Passenger Service	1		
Total Cars in Passenger Service		96	
Cars in Freight Service.			
Box Cars	582		
Flat Cars	435		
Stock Cars	6		
Coal Cars	48		
Tank Cars	7		
Total Cars in Freight Service		1,078	
Cars in Company Service.			
Officers & Pay Cars	2		
Gravel Cars	100		
Derrick Cars	7		
Caboose Cars	40		
Other Road Cars	139		
Total Cars in Company Service		288	
Total Cars in Service		1,558	
Total Amount Charged to Equipment			$2,985,566.17

Equipment per Mile of Road.

Passenger Cars, 1 per each 6 miles of road.
Freight Cars, 5.22 per 1 mile of road.
Maintenance of Way, 1 per 2 miles of road.
Locomotives, 1 per 6 miles of road.

Filed in Evidence Marked Petitioner's Exhibit Number 12. March 12, 1912.



Filed in Evidence Marked Petitioner's Exhibit Number 13. Mar. 12, 1912.

Vegetables.

Fiscal Year Ending.	Weight in pounds.	Equivalent to Packages. 50 pounds.	Revenue.	Average Rate per Package 50 pounds.
June 30th, 1894	2628072	52561	$ 6613.45	12.77
1895	4123486	82469	9333.47	11.32
1896	4938831	98777	14296.18	14.47
1897	6184225	123684	22115.47	17.88
1898	11400979	228019	52787.08	23.15
1899	9051648	181032	30423.87	16.80
1900	9033537	180671	35539.94	19.66
1901	20293683	405874	95315.07	23.48
1902	28450950	569019	128933.42	22.65
1903	29923690	598474	103901.20	17.36
1904	52583111	1051662	209215.09	19.89
1905	39918550	798371	107281.01	13.43
1906	42354347	847087	113825.98	13.43
1907	58893468	1177869	203967.27	17.31
1908	74772772	1495455	271285.19	18.13
1909	104324522	2086490	352295.33	16.88
1910	151483988	3029679	581778.07	19.02
1911	144721526	2894430	488387.05	16.90

Filed in Evidence Marked Petitioner's Exhibit Number 14. Mar. 12, 1912.

Oranges and Lemons.

Fiscal Year Ending.	Weight in pounds.	Equivalent to Packages. 80 pounds.	Revenue.	Average Rate per Package 80 pounds.
June 30th, 1894	25486302	318579	$ 54229.82	17.02
1895	11170065	139626	22385.50	16.04
1896	325163	4064	774.89	19.06
1897	8193568	102419	17387.16	16.97
1898	1571304	19641	4059.87	20.66
1899	1468326	18354	3825.83	20.83
1900	365789	4572	1239.57	27.11
1901	3410312	42629	10912.89	25.59
1902	5151600	64395	14855.41	23.06
1903	5696484	71206	15036.50	21.12
1904	11112666	138908	29790.34	21.44
1905	12765396	159567	32141.56	20.14
1906	13842475	173031	34612.83	20.01
1907	19526929	244087	51650.87	21.16
1908	26033131	325414	67604.18	20.77
1909	42238530	527981	120023.24	22.73
1910	52811554	660144	147100.55	22.28
1911	59834446	747930	171741.63	22.96

Filed in Evidence Marked Petitioner's Exhibit Number 15. Mar. 12, 1912.

Statement of Rates on Fruits and Vegetables from FEC. Rwy. Stations for the Years 1897 to 1910 Inclusive.

	Citrus Fruits. Per box 80 lbs.						Vegetables. Per crate 50 lbs.					
	*1897 Any Quantity	1902	1904 CL	1904 LCL	1910 CL	†1912 LCL	*1897 Any Quantity	1902	1904 CL	1904 LCL	1910 CL	†1912 LCL
10 miles & under.	10	10	8	11	9	12	8	8	6	9	6	8
20 " over 10	10	10	8	11	9	12	8	8	6	9	6	8
30 " " 20	10	10	8	11	9	12	8	8	7	10	6	8
40 " " 30	10	10	9	12	9	12	8	8	7	10	6	8
50 " " 40	10	10	10	13	10	13	8	8	8	11	7	9
60 " " 50	10	10	11	14	10	13	8	8	8	11	7	9
70 " " 60	15	10	12	15	11	14	10	8	9	12	8	10
80 " " 70	15	15	13	16	11	14	10	10	9	12	8	10
90 " " 80	15	15	14	17	12	15	10	10	10	13	8.5	10.5
100 " " 90	20	17	15	18	12	15	10	12	10	13	8.5	10.5
110 " " 100	20	17	16	19	13	16	12	12	11	14	9	12
120 " " 110	20	18	17	20	13	16	12	13	11	14	9	12
130 " " 120	20	18	18	21	14	17	14	13	12	15	10	13
140 " " 130	20	20	19	22	14	17	14	14	12	15	10	13
150 " " 140	20	20	20	23	15	18	14	14	13	16	11	14
160 " " 150	20	20	20	23	15	18	14	14	13	16	11	14
170 " " 160	25	24	21	24	16	19	16	16	14	17	11.5	14.5
180 " " 170	25	24	21	24	16	19	16	16	14	17	11.5	14.5
190 " " 180	25	24	22	25	17	20	16	16	15	18	12	15
200 " " 190	25	24	22	25	17	20	16	16	15	18	12	15
210 " " 200	28	24	23	26	18	21	18	18	16	19	13	16
220 " " 210	28	24	23	26	18	21	20	18	16	19	13	16
230 " " 220	28	25	24	27	19	22	22	22	17	20	13.5	16.5
240 " " 230	28	25	24	27	19	22	22	22	17	20	13.5	16.5
250 " " 240	28	25	25	28	20	23	25	22	18	21	14	17
260 " " 250	28	25	25	28	20	23	25	23	18	21	14	17
270 " " 260	28	25	26	29	21	24	25	23	19	22	15	18
280 " " 270	30	25	26	29	21	24	28	23	19	22	15	18
290 " " 280	30	30	27	30	22	25	30	24	20	23	15.5	18.5
300 " " 290	35	30	27	30	22	25	30	24	20	23	15.5	1898 18.5
310 " " 300	36	30	28	31	23	26	31	24	21	24	16	30 19
320 " " 310	36	30	28	31	23	26	31	25	21	24	16	30 19
330 " " 320	36	30	28	31	24	27	32	25	21	24	17	30 20
340 " " 330	36	30	29	32	24	27	33	25	22	25	17	30 20
350 " " 340	36	32	29	32	25	28	33	25	22	25	18	30 21
360 " " 350	37	33	29	32	25	28	34	25	22	25	18	30 21
370 " " 360	37	33	1904 30	33	26	29	35	25	1904 23	26	18.5	30 21.5
380 " " 370	..	..	37 30	33	26	29	..	..	29 23	26	18.5	21.5
390 " " 380	..	..	39 30	33	27	30	..	..	31 23	26	19	22
400 " " 390	..	..	43 31	34	27	30	..	..	35 24	27	19	22
410 " " 400	..	..	43 31	34	28	31	..	..	38 24	27	20	23
420 " " 410	..	..	43 31	34	28	31	..	..	39 24	27	20	23
430 " " 420	..	..	43 32	35	29	32	..	..	39 25	28	20.5	23.5
440 " " 430	..	..	43 32	35	29	32	..	..	40 25	28	20.5	23.5
450 " " 440	..	..	43 32	35	30	33	..	..	40 25	28	21	24
460 " " 450	..	..	44 33	36	30	33	..	..	41 26	29	21	24
470 " " 460	..	..	44 33	36	31	34	..	..	41 26	29	22	25
480 " " 470	..	..	44 33	36	31	34	..	..	42 26	29	22	25

*Also in effect prior to 1897.

†Effective January 2, 1912, by order of Interstate Commerce Commission.

Filed in Evidence Marked Petitioner's Exhibit Number 27. March 12, 1912.

Brevard County.

List of exceptions to property shown on old list.

Lots 3, 5, 7, 9, 11 & 13, Blk. 42, Melbourne, val.	$ 300.00
Above does not show in our records as now belonging to F. E. C. Ry.	
Part of Outlet #1, S. 16, T. 27, R. 37, val.	250.00
Sold to Model Land Co. 1/3/11.	
Lot 5, Blk. "C," Fisher's Addition, Titusville, val.	100.00
Sold to Model Land Co. 1/3/11.	
640 acres, S. 12, T. 21, R. 35, val.	960.00
Is not contiguous to Ry. and R. W. records do not show it as being Ry. property.	
222 acres, 26, 21, 35, val.	333.00
Not contiguous to Ry. and R. W. records do not show it as being Ry. property.	
340 acres, 8, 22, 35, val.	720.00
Not contiguous to Ry. and R. W. records do not show it as Ry. property.	
Lots B & C, Assessor's Addition, Cocoa, val.	1,333.00
R. W. records do not show that Ry. Co. owns.	
Lots K and E ½ Lot M, Cocoa, val.	1,500.00
R. W. records do not show that Ry. Co. owns.	

Filed in Evidence Marked Petitioner's Exhibit Number 28. March 12, 1912.

Duval Co.

Lots 4, 5, 8, 9, 10, Blk. 3, So. Jax., val.	$2,000.00
Ry. records do not show these lots.	

Filed in Evidence Marked Petitioner's Exhibit Number 29. March 12, 1912.

Palm Beach Co.

	Val.
Lots 9, 10, 8, 1, Block 32, Clow Addition	$ 975.00
West Palm Beach sold Model L. Co., 1/3/11.	
Lots 1, 2, 3, 4, 5, 6, Blk. 52, sold Model L. Co. 1/3/11.	2,700.00
All Blk. 53 sold Model L. Co. 1/3/11.	6,700.00

Filed in Evidence Marked Petitioner's Exhibit Number 30. March 12, 1912.

Volusia County.

	Val.
Lot 1, Blk. 4, La Vega (Ormond) sold Model L. Co. 1/3/11.	$ 75.00
Lots 3, 5, 7, 9, 11 & 12, Blk. 4, La Vega (Ormond) sold Model L. Co. 1/3/11	450.00
Lots 1 & 2, 4 & 8, Carantonen Blk. (Ormond) sold Model L. Co. 1/3/11	300.00
Lot 4, Alhambra Blk. (Ormond) sold Model L. Co. 1/3/11.	75.00
Lot 8, Alhambra Blk. (Ormond) sold Model L. Co. 1/3/11.	75.00
Lots 2, 4, 6, 8, La Vega, Blk. (4) (Ormond) sold Model L. Co. 1/3/11	300.00
Lots 12 & 13, Liberia Grant, 3½ (Ormond) sold Model L. Co. 1/3/11	400.00
Lots 16, 17, 18, Blk. 2½ Mason & Carswell (Ormond) sold Model L. Co. 1/3/11	150.00

Filed in Evidence Marked Petitioner's Exhibit Number 31. March 12, 1912.

St. Johns County. Val.

List does not show at 81 M. P.

R. W. List does not show at S. W. Cor. 25—10—28
" " " " " " N. E. " 6—11—29
" " " " " " S. W. " 3—12—30
" " " " " " N. E. " 9—12—30
These are small strips of no great acreage or value.

Filed in Evidence Marked Petitioner's Exhibit Number 32. March 12, 1912.

Statement of Tonnage and Revenue of Shipments Forwarded from Points Jewfish Creek to Knights Key Inclusive, for the Year Ending June 30th, 1911.

	Tonnage.	Revenue.
Tavernier	290	$ 1.28
Plantation	550	4.51
Quarry	46637	50.92
Islamorada	8545	36.60
Central Supply	16117	92.13
Midway	552	1.80
Long Key	22120	96.84
Grassy	338126	1768.21
Marathon	248315	400.29
Knights Key	1258031	3709.45
	1939283	$6162.03

Filed in Evidence Marked Petitioner's Exhibit Number 33. March 12, 1912.

Statement of Tonnage and Revenue on Shipments Forwarded From Key West, Fla., January 22nd to March 10th, 1912, inclusive.

Tonnage.	Revenue.
327,040	$787.57

Filed in Evidence Marked Petitioner's Exhibit Number 34.

Statement Showing the Earnings Received per Box from Key West to Jacksonville in Handling Pineapples from Havana, Cuba, Destined to the Points Named.

	Per box 80 lbs.
Cincinnati	21.4 cents
Chicago	16.7 "
Kansas City	17.5 "
Cleveland	16 "

Filed in Evidence Marked Petitioner's Exhibit Number 35.

Statement of Errors in Extension in Exhibits 14 and 15 in the Florida East Coast Railway Company's Petition

EXHIBIT 14 Vegetables in Crates From	Crates	Actual Revenue	Reduction in rates C.L. c	Reduction in rates L.C.L. c	REVENUE on basis of new rates as per Exhibit	REVENUE on basis of new rates as Corrected	Revenue on basis of new rates under stated in Exhibits
Bayard	488	70.75		1	4.88	65.87	
Yelvington	5,998	560.56		2	450.60	440.60	
Kalamazoo	18	1.60		1	1.48	1.42	
Oslo	34	2.37		3½	1.16	1.18	
Ft. Pierce	2,885	369.01		4	243.61	253.61	
Carson	148	10.30		4	4.48	4.38	
A-248	4	1.06		4	.94	.90	
Gomez	315	63.98		4	49.38	51.38	
West Palm Beach	2,549	542.76		4½	528.05	428.06	
Hypoluxo	16,776	3,775.46		5	2,836.66	2,936.66	
Boynton	40,651	8,666.93		5	6,633.38	6,634.38	
A-314	132	31.14		5	24.58	24.54	
Ft. Lauderdale	91,363	19,746.42		4	15,091.90	16,091.90	
Arch Creek	128,476	29,794.15		4	23,655.11	24,655.11	
Little River	134,560	30,895.59		4½	24,740.39	24,840.39	
Lemon City	26,052	5,982.08		4½	4,819.74	4,809.64	
Miami	98,303	23,333.67		4½	19,110.04	18,910.04	
Perrine	74,196	17,626.34		4	4,658.50	14,658.50	
Modella	3,935	1,001.51		5	814.76	804.76	
Total Exhibit 14.	626,883	142,475.68			103,669.64	115,613.32	$11,943.68
EXHIBIT 15 Citrus Fruits in Crates From							
Hastings	12,888	1,586.56		1	1,467.68	1,457.68	
Blake	9,430	1,688.27		4	1,312.07	1,311.07	
Glencoe	6,058	1,271.17		4	928.85	1,028.85	
Turnbull	746	171.58		4	134.28	141.74	
Celery City	1,110	239.19		5	184.69	183.69	
Cocoa	131,075	28,737.09		5	22,173.34	22,183.34	
Hallandale	3,466	987.48		4	749.84	848.84	
Perrine	2,993	897.91		3	828.12	808.12	
Total Exhibit 15.	167,766	35,579.25			27,778.87	27,963.33	$184.46
Grand Total	794,649	178,054.93			131,448.51	143,576.65	$12,128.14

Filed in Evidence Marked Petitioner's Exhibit Number 37, March 12, 1912.

Passenger Cars.

No.				Price each	
1	Private car 91	Rebuilt	1904,	$5,250.00	$5,250.00
1	" " 92	"	1893,	5,250.00	5,250.00
2	Observation cars 1 & 2	Built	1887,	9,963.89	19,927.78
4	Coaches 40, 41, 42, 43	"	1888,	3,300.00	13,200.00
11	" 51 to 61	"	1894,	3,300.00	36,300.00
10	" 62 to 71	"	1902,	7,603.50	76,035.00
10	" 72 to 81	"	1906,	9,257.00	92,570.00
2	" 82 & 83	"	1888,	9,963.89	19,927.78
1	" 25	"	1893,	3,300.00	3,300.00
2	" 26 and 29	"	1888,	3,300.00	6,600.00
8	" 30, 31, 32, 33, 34, 35, 36, 37	"	1894,	3,300.00	26,400.00
7	" 44 to 50	"	1893,	4,475.00	31,325.00
2	" 24 and 28	"	1887,	3,300.00	6,600.00
1	" 38	"	1887,	3,500.00	3,500.00
2	Baggage & Mail cars 307 & 308	"	1894,	4,400.00	8,800.00
2	Mail cars 305 and 306	"	1902,	5,288.00	10,576.00
8	Express cars 402 to 409	"	1899,	3,718.25	29,746.00
6	" " 424 to 429	"	1901,	5,000.00	30,000.00
6	" " 430 to 435	"	1906,	5,752.00	34,512.00
3	Baggage " 411 to 413	"	1887,	3,300.00	9,900.00
2	" " 414 and 415	"	1888,	3,000.00	6,000.00
2	" " 420 and 421	"	1894,	3,300.00	6,600.00
1	Ganz Motor	"	1906,	13,286.10	13,286.10
5	Steel Coaches 100, 101, 102, 103, 104	"	1912,	16,400.00	82,000.00
4	" Express, 436, 437, 438, 439	"	1912,	11,380.00	45,520.00
3	Mail cars, 309, 310, 311	"	1912,	12,720.00	38,160.00
2	Steel Combination cars 105, 106	"	1912,	16,500.00	33,000.00
5	Mail cars, 300 to 304	"	1893,	4,280.00	21,400.00
	Total				$715,685.66

Filed in Evidence Marked Petitioner's Exhibit Number 39, March 12, 1912.

Florida East Coast Railway Company.

Passenger Equipment.

Quantity.	Description	Number.	Length.	Date built or acquired.	Values per car. Orig price.	Today (Est.)
1	Private	91	57′	Reb. 1904	$5,250.00	$12,000.00
1	Private	92	51′ 6″	" 1893	5,250.00	11,500.00
2	Observation	1—2	48′ 8″	1887	9,963.89	10,000.00
4	Coaches	40—3	50′	1888	3,300.00	5,600.00
11	Coaches	51—61	50′	1894	3,300.00	5,600.00
10	Coaches	62—71	60′	1902	7,603.50	8,150.00
10	Coaches	72—81	70′	1906	9,257.00	10,850.00
2	Coaches	82—83	60′	1888	9,963.89	10,000.00
1	C'ch Part'n	25	50′	1893	3,300.00	5,800.00
2	C'ch Part'n	26 & 29	50′	1888	3,300.00	5,800.00
8	C'ch Part'n	30—37	50′	1894	3,300.00	5,800.00
7	C'ch Part'n	44—50	50′	1893	4,475.00	5,800.00
2	C'ch-Bag.	24 & 28	46′	1887	3,300.00	5,000.00
1	C'ch-Bag.-Ml.	38	52′	1887	3,500.00	5,200.00
2	Bag.-Mail	307-8	50′	1894	4,400.00	4,700.00
2	Full mail	305-6	60′	1902	5,288.00	7,000.00
5	Full mail	300-4	50′	1893	4,280.00	6,400.00
8	Express	402-9	60′	1889-1895	3,718.25	5,600.00
6	Express	424-29	60′	1901	5,000.00	6,000.00
6	Express	430-35	70′	1901	5,752.00	7,050.00
3	Baggage	411-13	50′	1887	3,300.00	4,300.00
2	Baggage	414-15	40′	1888	3,000.00	4,000.00
2	Baggage	420-21	50′	1894	3,300.00	4,500.00
1	Ganz Motor			1906	13,286.10	13,700.00
7	St'l Coaches		70′	1912	16,434.21	17,500.00
4	St'l Express		70′	1912	11,380.00	12,500.00
3	St'l Mail		60′ 10″	1912	12,720.00	13,300.00
113						

Filed in Evidence Marked Petitioner's Exhibit, Number 44, Mar. 12, 1912.

Statement of Earnings and Expenses July to October, Years 1909, 1910, 1911, and 1912.

	Year 1909 July 1st to Oct. 31/1908	Year 1910 July 1st to Oct. 31/1909	Year 1911 July 1st to Oct. 31/1910	Year 1912 July 1st to Oct. 31/1911
Earnings	$609,315.93	$674,791.07	$799,401.88	$926,497.04
Operating Expenses	721,493.53	611,709.15	715,597.48	845,741.95
Net Earnings	*$112,177.60	$63,081.92	$83,804.40	$80,755.09

*Deficit.

Filed in Evidence by Petitioner as a Substitute to Mr. Dittmar's Testimony.

St. Lucie County—Lots.

	Sec.	T.	R.	Acres.	Valuation.	Amount.
Sebastian. Lots 4 and 5 about 200 x 500 ft.	6	31	39 Section House & Station	2.29	250.00	572.50
St. Lucie. Lot 100 x 200 ft. in S. E. part of S. E. ¼	17	34	v 40 Section House	.46	100.00	46.00
Ft. Pierce. Lot 1 Blk "C" Edgartown (50 x 100)	10	35	40			100.00
Lot 9 and West 25 ft. of Lot 8, Blk. "X"	10	35	40			200.00
S. W. Corner Blk. "B"	10	35	40			50.00
Lots 6 & 7 Blk. "H"	10	35	40			100.00
Lots 7 & 8 Blk. "E"	10	35	40			80.00
W. ½ Lot 4 Blk. "J"	10	35	40			350.00
All within "Y" of Lot 4.	10	35	40			1200.00
All within "Y" of Blks. 1 & 8 Carlton's Add'n.	10	35	40			700.00
Lots 6 & 7, & part of Lots 1, 2, 3, & 4, Blk. 7 Carlton's Add'n.	10	35	40			250.00
100 x 200 ft in Lots 9 & 10, Subdiv. of lots 4 Sec. No.	10	35	40	.46	200.00	92.00
400 x 425 ft N. W. cor. N. E. ¼	13	35	40	3.90	150.00	585.00
Strip 25 x 500 ft along North line of Sec.				.29	150.00	43.50
100 x 100 ft in N. part of Gov't lot 1	13	35	40	.23	150.00	34.50
Ruxton Lot 50 x 125 ft. W. side Lot 4	9	37	41	.14	175.00	24.50
Jensen Lot 90 x 162 in lots 1, 2 & 3	22	37	41	.34	600.00	204.00

St. Lucie County, Lots, Continued.

	Sec.	T.	R.	Acres.	Valuation.	Amount.
Additional 50 x 620' E. side in S. W. ¼ Lots 2 & 3	22	37	41	.71	600.00	426.00
90 x 220 ft. E. of Ry. & N. of North St. except 60 x 100' (Wille's lot)				.30	800.00	240.00
30 x 418 ft additional Station				.29	800.00	232.00
60 x 136' E. of Ry.				.19	800.00	152.00
30 x 300' E of Ry. in lot	22	37	41	13.50	60.00	810.00
13-½ acres, N. of R. R. of Lot 3						6492.00

Valuation of Lands of the F. E. C. Railway Company, as Appraised by A. C. Dittmar and F. H. Fee of Ft. Pierce, Fla.

St. Lucie County.

Sebastian.	Sec.	Tp.	Range.		Value of land per acre.
Lots 4 and 5, about 200 x 500 ft.....	6	31	39	(Sec. house & Station) x	250.00
Railroad right of way from Sebastian North to County line.....		"	"		25.00
Right of way 1 mile South from Sebastian		"	"		40.00
Right of way South to Wabasso Station		"	"		30.00
Wabasso.					
Right of way for main track and siding, part of SW ¼ of SE ¼.....28		31	39		40.00
Right of way South to Gifford Sta. ..		32	"		30.00
Gifford.					
Lot 100 x 200 ft. in N. part of SW ¼ of SW ¼ 23		32	39	(Sec. house)	30.00
Addl 50 ft. on each side across SE ¼ of NW ¼ 26		"	"		30.00
Addl 50 ft. on each side across NE ¼ of SW ¼ ..... "		"	"		30.00
Right of way South to Vero ..... "		"	"		30.00
Vero.					
Right of way and additional 50 ft. East side over NW ¼ of SW ¼..... 1		33	39		35.00
Right of way South to Oslo Station..		33	39		35.00
Right of way from Oslo South to St. Lucie Station		33&34	39		80.00
St. Lucie.					
Lot 100 x 200 ft. in SE part of SE ¼ of 17		34	40	(Sec. house)	100.00
Right of way from St. Lucie South to South line of Township 34.....					60.00
Right of way from Township line to South line of Section 3		35	"		75.00

	Sec.	Tp.	Range.		Value of land per acre.
Ft. Pierce.					
Right of way through North part of Section 10 to Dittmar's Addition.....	10	35	40		100.00
Right of way South through Dittmar's addition to Tropical Ave...	"	"	"		750.00
Lot 1 Block "C" Edgartown (50 x 100)	"	"	"		100.00
Lot 9 and West 25 ft. of Lot 8 Block "X"	"	"	"		200.00
SW corner Block "B"	"	"	"		50.00
Lots 6 and 7 Block "H"	"	"	"		1000.00
Lots 7 and 8 Block "E"	"	"	"		800.00
W. ½ of Lot 4 Block "J"	"	"	"		350.00
All within the "Y" of Lot 4.....	"	"	"		1200.00
All within the "Y" of Blocks 1 and 8 in Carlton's Addition	"	"	"		700.00
Lots 6 and 7 and part of Lots 1, 2, 3 and 4, Block 7 Carlton's Add.....	"	"	"		250.00
100 x 200 ft. in Lots 9 & 10 subdiv. of Lot 4	"	"	"	(Sec. house)	200.00
400 x 425 ft. NW cor. of NE ¼ and strip 25 x 500 ft. along North line of section	"	"	"		150.00
100 x 100 ft. in N. part of Govt. lot 1..	"	"	"		150.00
Right of way from Tropical Ave. to South line of Section 10	"	"	"		800.00
Right of way through Section 15.....		"	"		200.00
Right of way through Sec. 23-26-35-36		"	"		200.00
White City Station.					
50 x 1200 ft. on W. side partly in Sec. 36	36		40		200.00
and	" 1	36	"		
Right of way through Sec. 1, T. 36 R. 40 to Eldred Station	" 1	"	"		200.00

	Sec.	Tp.	Range.	Value of land per acre.
Eldred Station.				
Addl. 50 x 225 ft. on E. side over 2 a. of Wooten's Subdiv'n.....	1	36	40	175.00
Addl strip 25 ft. wide and 750 ft. more or less long	"	"	"	175.00
Right of way through Eldred and through Section 12, & part of Secs. 7 and 8 to Ankona		"	"	175.00
Right of way through part of Sections 8-19-29 and 32 to S. line of T. 36.....		"	41	175.00
Right of way through part of Sec. 5 and fractional Section 4.....		37	41	175.00
Ruxton.				
Lot 50 x 125 ft. W. side of lot 4 Sec. 9		"	"	
Right of way through Sec. 9 and 15 and part of Sec. 16		"	"	175.00

Jensen.			
Lot 90 x 162 ft. in Lot 1, 2 and 3 Sec. 22	"	"	600.00
Addl 50 x 620 ft. E. side in S ¼ lots 2 and 3, Sec. 22	"	"	600.00
90 x 220 ft. E. of Ry. and N of North St. except 60 x 100 ft. (Wille's lot)			800.00
30 x 418 ft. Additional (Station)			800.00
60 x 136 ft. E. of Ry.			800.00
30 x 300 ft. E. of Ry. in Lot 1 22	"	"	800.00
13-½ acres N. of R. R. of Lot 3 27	"	"	60.00
Right of way through Jensen 22	"	"	600.00
Right of way through Sections 27 & 28	"	"	60.00
Right of way through Secs. 32-33	"	"	75.00

We, the undersigned, certify that we have been over the territory embraced in the above list and the attached sheet and have valued the several properties as near as possible according to actual sales of the same kind of property in the different neighborhoods.

Dated this 11th day of November, 1907.

.....

.....

St. Lucie County.

	Sec.	T.	R.	Acres.			Valuation.	Amount.
From Sebastian River to M. P. 213, Fleming Gt.		30	38	8.00			25.00	$200.00
From M. P. 213 to 214 Fleming Grant		30	38	12.12			25.00	303.00
From M. P. 214 to 215	6	31	38	12.12			40.00	484.80
" " 215 to 216	6-7	31	39	9.85			30.00	295.50
" " 216 to 217	8-17	31	39	12.12			30.00	363.60
" " 217 to 218	17-20	31	39	12.12			30.00	363.60
" " 218 to 219	20-28	31	39	12.12			30.00	363.60
" " 219 to 220	28-33	31	39	10.60			40.00	424.00
" " 220 to 221	33-3	31-32	39	12.12			30.00	363.60
" " 221 to 222	3-10	32	39	12.12			30.00	363.60
" " 222 to 223	10-15	32	39	10.84			30.00	325.20
				10.52			30.00	315.60
" " 223 to 224	15-22	32	39	1.60	No Deed		30.00	48.00
" " 224 to 225	23-26	32	39	12.12			30.00	363.60
" " 225 to 226	26	32	39	18.43			30.00	552.90
				3.00			30.00	90.00
" " 226 to 227	35	32	39	9.12	"	"	30.00	273.60
				10.37			30.00	311.10
" " 227 to 228	2-1	33	39	3.79			35.00	132.65
				7.46			35.00	261.10
" " 228 to 229	1-12	33	39	4.66	"	"	35.00	163.10
				10.72			35.00	375.20
" " 229 to 230	12-13 13-24	33	39	1.40	"	"	35.00	49.00
" " 230 to 231	19	33	39-40	12.12			35.00	424.20
" " 231 to 232	19-30	33	40	12.12			80.00	969.60
" " 232 to 233	30-31	33	40	12.12			80.00	969.60
				8.61			80.00	688.80
" " 233 to 234	31-6	33-34	40	3.10	"	"	80.00	248.00

		Sec.	T.	R.	Acres.		Valuation.	Amount.
From M. P. 234 to 235		5-8	34	40	10.52		$80.00	$841.60
" " 235 to 236		8-17	34	40	10.50		80.00	840.00
" " 236 to 237		17-21	34	40	12.12		80.00	969.60
" " 237 to 238		21-28	34	40	8.90		80.00	712.00
" " 238 to 239		28-33	34	40	11.80		80.00	944.00
" " 239 to 240		33-34	34	40	9.08		60.00	544.80
" " 240 to 241		3	35	40	7.90		75.00	592.50
					1.10		100.00	110.00
" " 241 to 242		10	35	40	80		750.00	600.00
					4.17		800.00	3,336.00
" " 242 to 243		15	35	40	11.26		200.00	2,252.00
		15						
" " 243 to 244		22-23	35	40	11.72		200.00	2,344.00
" " 244 to 245		23-26	35	40	6.66		200.00	1,332.00
		26-35						
" " 245 to 246		36	35	40	11.72		200.00	2,344.00
" " 246 to 247		36-1	35-36	40	11.66		200.00	2,332.00
					4.45		200.00	890.00
" " 247 to 248		1-12	36	40	4.30		175.00	752.50
		12-7						
" " 248 to 249		18	36	40-41	12.00		175.00	2,100.00
" " 249 to 250		18-29	36	41	10.69		175.00	1,870.75
		19-30						
" " 250 to 251		29	36	41	9.98		175.00	1,746.50
" " 251 to 252		29-32	36	41	10.56		175.00	1,848.00
" " 252 to 253		32	36	41	6.66		175.00	1,165.50
" " 253 to 254		5-4	36-37	41	8.04		175.00	1,407.00
" " 254 to 255		4-9	37	41	6.10		175.00	1,067.50
		9-16			.40	No	175.00	70.00
" " 255 to 256		15	37	41	6.85	Deed	175.00	1,198.75
					1.00	"	600.00	600.00
" " 256 to 257		15-22	37	41	6.00		600.00	3,600.00
					.46	"	60.00	27.60
" " 257 to 258		22-27	37	41	10.00		60.00	600.00
" " 258 to 259		27-28	37	41	12.12		60.00	727.20
		28-33						
" " 259 to 260		32	37	41	12.12		75.00	909.00
" " 260 to 261		32	37	41	12.00		75.00	900.00
St. Lucie River.								

Chambers' Exhibit No. 1. March 25.

Earnings, Operating Expenses, Taxes, Interest and Other Charges for Eight Months Ending February 28th, 1909-1910-1911 and Seven Months Ending January 31st, 1912.

	1909		1910
Earnings	$1,748,151.24		$1,883,118.59
Operating Expenses	1,450,860.78		1,380,693.18
Net Operating Revenue	$297,290.46		$502,425.41
Outside Operations—Deficit.			
Total Net Revenue	297,290.46		502,425.41
Taxes $88,700.00		$94,226.70	
Int. on Funded Debt *441,966.64		§300,000.00	
Hire of Equip 6,554.43		10,234.11	
Rentals 3,857.84		3,875.15	
Sundry Interest †75,911.79	616,990.70	2,900.27	411,276.23
Surplus			$91,149.18
Deficit	$319,700.24		

	1911		1912
Earnings	$2,284,964.81		$1,993,265.27
Operating Expenses	1,606,226.16		1,623,918.13
Net Operating Revenue	$678,738.65		$369,347.14
Outside Operations—Deficit			°303.33
Total Net Revenue	678,738.65		369,043.81
Taxes $111,641.13		$108,500.00	
Int. on Funded Debt §300,000.00		§262,500.00	
Hire of Equip 41,300.73		64,151.35	
Rentals 7,203.99		6,959.27	
Sundry Int. °†11,085.91	449,059.94	°†9,473.37	432,637.25
°In red ink in copy.			
Surplus	$229,678.71		
Deficit			$63,593.44

*Includes interest on 1st mortgage bonds $7,259,000.00 at 5 per cent $241,966.64 for year 1909 only.

*Includes interest on 2nd mortgage bonds $6,000,000.00 at 5 per cent $200,000.00 for year 1909 only.

†Includes interest on money borrowed and $4,166.72 interest on Jacksonville Terml. Co.'s bonds which beginning July, 1910 (the Jacksonville Terml. Co. interest), is carried in rentals, it also includes any interest we have collected.

§Does not include any interest on 2nd mortgage income bonds $20,000,000.00.

Chambers Exhibit No. 2. Mch. 25, 1912.

Commerce Court No. 58. Fla. East Coast Ry. Co. vs. U. S.

Florida East Coast Railway.

Comparative Report of Earnings. (Estimated.)

	Weekly Period ending March 14th.				2 Weeks ending March 14th.			
	1912	1911	Increase	Decrease	1912	1911	Increase	Decrease
Passenger	$72,525.45	$67,348.35	$5,177.10		$150,418.50	$130.908.35	$19,510.15	
Freight	45,948.89	82,960.35		$37,011.46	92,621.81	159,601.17		$66,979.36
Express	11,386.85	13,690.90		2,304.05	23,669.67	28,274.04		4,604.37
Mail	2,105.98	2,105.98			4,211.96	4,211.96		
Parlor Cars								
Sleeping Cars								
Buffet								
Baggage Freight.	1,428.35	1,265.50	162.85		3,092.07	2,855.50	236.57	
Ocean Pier								
Palm Beach Street Car								
Lake Worth Bridge	425.50	414.10	11.40		859.70	928.20		68.50
Ormond Bridge.	260.90	203.15	57.75		558.45	581.85		23.40
Miscellaneous	375.00	375.00			750.00	750.00		
Total	$134,456.92	$168,363.33		$33,906.41	$276,182.16	$328,111.07		$51,928.91

Increase Per Cent.....
Decrease Per Cent 20 14/100.

Increase Per Cent.....
Decrease Per Cent 15 82/100.

St. Augustine, Mch. 19, 1912.

W. H. CHAMBERS,
Controller.

Chambers' Exhibit No. 3. March 25, 1912.

Ticket Sales at Key West.

Month of January, 1912—8 days	$3,002.15
Less foreign proportion	239.62
F. E. C. Proportion	$2,762.53
Month of February, 1912	$11,135.79
Less foreign proportion	561.08
F. E. C. Proportion	$10,574.71

Ticket Sales at Knights Key.

Month of February, 1911	$2,747.70
Less foreign proportion	57.85
F. E. C. Proportion	$2,689.85

Chambers' Exhibit No. 4. March 25, 1912.

Freight Earnings on Key West Extension July, 1910, to January, 1911, inc., and July, 1911, to January, 1912, inc.

Arrived at by using ton miles for freight on the Extension from Miami south multiplied by the average receipts per ton mile for each fiscal year.

Ton Miles 1910-11	1,402,593	Average Receipts	.02006
Ton Miles 1911-12	1,314,792	Average Receipts	.01777
July, 1910, to January, 1911			$28,136.01
July, 1911, to January, 1912			23,363.85

Passenger Earnings on Key West Extension, July, 1910, to February, 1911, inc., and from July, 1911, to February, 1912, inc.

Arrived at by taking actual mileage made by each passenger on the Extension from Miami south multiplied by average receipts per passenger per mile for each fiscal year.

Total miles 1910-11	1,719,756	Average Receipts	.024 24
Total miles 1911-12	3,156,716	Average Receipts	.02427
July, 1910, to February, 1911			$42,202.81
July, 1911, to February, 1912			76,613.49

Chambers' Exhibit No. 5. March 25, 1912.

Statement of Earnings, Operating Expenses, Taxes, Interest and Other Charges for Six Months November to April Inc., Fiscal Years Ending June 30th, 1909, 1910 and 1911.

1908-1909.

		Nov.		Dec.		Jany.
Earnings		$200,063.58		$248,766.46		$298,550.93
Operating Expenses		169,018.30		166,785.23		198,825.13
Net Operating Revenue . . .		31,045.28		81,981.23		99,725.80
Taxes	$11,000.00		$11,000.00		$11,000.00	
Debt	55,245.83		55,245.83		55,245.83	
Hirt of Equipt.	‡1,190.00		2,210.75		1,502.22	
Rentals	334.57		242.78		749.57	
†Sundry Interest	460,84	65,851.24	520,84	69,220.20	73,132.85	141,630.47
Surplus				12,761.03		
Deficit		34,805.96				41,904.67

*Includes interest on 1st Mortgage Bonds, $7,259,000.00 at 5 per cent, $30,245.83, and on 2nd Mortgage Bonds, $6,000,000.00 at 5 per cent, $25,000.00.

†Includes interest on money borrowed and $520.84 interest on Jacksonville Terminal Company Bonds which, beginning July 1st, 1910, is carried in Rentals. It also includes any interest we have collected.

*Int. on Funded

‡In red ink in copy.

1908-1909.

		Feby.		March.		April.
Earnings . . .		$391,454.34		$493,677.31		$440,083.30
Operating Expenses . . .		194,738.59		198,378.94		176,479.59
Net Operating Revenue . .		196,715.75		295,298.37		263,603.71
Taxes	$11,700.00		$11,700.00		$12,350.00	
*Int. on Funded Debt	55,245.83		55,245.83		55,245.83	
Hire of Equipt.	6,602.09		9,131.06		5,359.04	
Rentals	242.78		242.78		242.78	
†Sundry Interest	520.84	74,311.54	520.84	76,840.51	512.09	73,709.74
Surplus . . . . Deficit.		$122,404.21		$218,457.86		$189,893.97

*Includes interest on 1st mortgage bonds $7,259,000.00 at 5 per cent, $30,245.83, and on 2d mortgage bonds $6,000,000.00 at 5 per cent, $25,000.00.

†Includes interest on money borrowed and $520.84 interest on Jacksonville Terminal Company's bonds which, beginning July 1, 1910, is carried in rentals; it also includes any interest we have collected.

°In red ink in copy.

Chambers' Exhibit No. 6 (2 sheets). March 25, 1912.

Statement of Earnings, Operating Expenses, Taxes, Interest and Other Charges for Six Months November to April Inc., Fiscal Years Ending June 30th, 1909, 1910 and 1911.

1909-1910.

		Nov.		Dec.		Jany.
Earnings . . .		$207,785.78		$273,816.49		$321,715.22
Operating Expenses. . . .		158,274.78		178,300.44		209,224.91
Net Operating Revenue.....		49,511.00		95,516.05		112,490.31
Taxes	$11,544.45		$11,544.45		$12,500.00	
*Int. on Funded Debt.	37,500.00		37,500.00		37,500.00	
Hire of Equipment.	2,014.72		1,232.37		5,145.52	
Rentals	306.27		372.10		500.13	
†Sundry Interest	520.84	51,886.28	520.84	51,169.76	498.96	56,144.61
Surplus				44,346.29		56,345.70
Deficit		2,375.28				

*Includes interest on 1st Mortgage Bonds, $10,000,000.00 at 4½ per cent, but does not include any interest on 2nd Mortgage Income Bonds, $20,000,000.00.

†Includes interest on money borrowed and $520.84 interest on Jacksonville Terminal Company's Bonds, which beginning July 1st, 1910, is carried in rentals. It also includes any interest we have collected.

1909-1910.

		Feby.		March.		April.
Earnings . . .		$405,010.03		$533,601.88		$531,617.52
Operating Expenses . . .		223,183.90		232,133.40		203,165.62
Net Operating Revenue . .		181,826.13		301,468.48		328,451.90
Taxes.	$12,500.00		$15,234.20		$15,234.20	
*Int. on Funded Debt	37,500.00		37,500.00		37,500.00	
Hire of Equipment	4,320.02		9,147.32		11,939.73	
Rentals. . . .	402.52		424.82		381.87	
†Sundry Interest	494.59	55,217.13	520.84	62,827.18	422.33	65,478.13
Surplus		$126,609.00		$238,641.30		$262,973.77
Deficit.						

*Includes interest on 1st Mortgage Bonds, $10,000,000.00, at 4½ per cent, but does not include any interest on 2nd Mortgage Income Bonds, $20,000,000.00.

†Includes interest on money borrowed and $520.84 interest on Jacksonville Terminal Company's Bonds, which beginning July 1st, 1910, is carried in rentals. It also includes any interest we have collected.

Statement of Earnings, Operating Expenses, Taxes, Interest and Other Charges for Six Months November to April Inc., Fiscal Years Ending June 30th, 1909, 1910 and 1911.

1910-1911.

		Nov.		Dec.		Jany.
Earnings . . .		$264,164.67		$338,606.02		$383.580.64
Operating Expenses . . .		183,955.47		201,519.87		248,570.38
Net Operating Revenue . .		80,209.20		137,086.15		135,010.26
Outside Operations, Deficit						
Total Net Revenue						
Taxes	$13,731.28		$13,753.45		$13,731.28	
*Int. on Funded Debt	37,500.00		37,500.00		37,500.00	
Hire of Equipment. . . .	4,675.01		8,277.70		9,326.84	
Rentals. . . .	826.64		826.86		1,258.19	
†Sundry Interest	‡243.94	56,488.99	‡11,447.38	48,910.63	‡60.00	61,756.31
Surplus. . . .		23,720.21		88,175.52		73,253.95
Deficit. . . .						

*Includes interest on 1st Mortgage Bonds, $10,000,000.00, at 4½ per cent, but does not include any interest on 2nd Mortgage Income Bonds, $20,000,000.00.

†Includes interest on money borrowed and $520.84 interest on Jacksonville Terminal Company's Bonds, which beginning July 1st, 1910, is carried in rentals. It also includes any interest we have collected.

‡In red ink in copy.

1910-1911.

		Feby.		March.		April.
Earnings . . .		$499,211.60		$707,065.91		$575,489.03
Operating Expenses . . .		256,582.96		296,029.08		247,143.36
Net Operating Revenue . .		242,628.64		411,036.83		328,345.67
Outside Operations, Deficit						‡2,090.17
Total Net Revenue						$326,255.50
Taxes	$15,500.00		$15,500.00		$15,500.00	
*Int. on Funded Debt	37,500.00		37,500.00		37,500.00	
Hire of Equipment	10,596.78		19,991.68		17,204.97	
Rentals . . .	934.75		810.40		525.14	
†Sundry Interest	‡277.72	64,253.81	‡43.75	73,758.22	‡60.00	70,670.11
Surplus. . . .		178,374.83		337.278.50		255.585.39
Deficit.....						

*Includes interest on 1st Mortgage Bonds, $10,000,000.00 at 4½ per cent, but does not include any interest on 2nd Mortgage Income Bonds, $20,000,000.00.

†Includes interest on money borrowed and $520.84 interest on Jacksonville Terminal Company's Bonds, which beginning July 1st, 1910, is carried in rentals. It also includes any interest we have collected.

‡In red ink in copy.

Chambers' Exhibit No. 7. March 25, 1912.

Florida East Coast Railway Co.

Statement of freight and passenger business accruing to the main line from operation of Branch Lines and Key West Extension for years ending June 30th, 1910 and 1911, based on actual mileage on main line by each ton of freight and each passenger going to or coming from or passing over Branch Lines and Key West Extension.

1910.

	Frt. Rev.	Pas. Rev.	Tot. Rev.
Jacksonville & Atlantic Branch	$72,291.04	$387.78	$72,678.82
Atlantic & Western Branch	26,119.04	20,668.44	46,787.48
Titusville & Sanford Branch	60,627.65	9,102.66	69,730.31
Key West Extension Branch	191,593.78	92,666.16	284,259.94
Key West Extension account Company's business	74,275.57	7,060.55	81,336.12

1911.

	Frt. Rev.	Pas. Rev.	Tot. Rev.
Jacksonville & Atlantic Branch	$54,171.66	$1,358.52	$55,530.18
Atlantic & Western Branch	30,649.09	27,068.61	57,717.70
Titusville & Sanford	66,220.47	15,201.15	81,421.62
Key West Extension	197,328.95	144,978.78	342,307.73
Key West Extension account Company's business	98,514.27	8,993.07	107,507.34

Key West Extension Miami to Knights Key.

Parrott. Ex. 12.

J. A. G. O.
(13218)

THIS CONTRACT entered into this 15th day of October, 1902, between the United States of America, party of the first part, and The Florida East Coast Railway Company, party of the second part, WITNESSETH that:

WHEREAS, The River and Harbor Act of June 13, 1902 (32 Stats. 338), contains the following item:—

"Improving Biscayne Bay, Florida, with a view to obtaining a channel eighteen feet deep from the wharves at Miami to the sea by way of the northerly line of the two lines north of Norris Cut, as described in the report submitted in House Document Numbered Six hundred and sixty-two, Fifty-sixth Congress, first session, and a basin of same depth sixteen hundred feet long and five hundred feet wide, adjacent to the wharves at Miami, fifty thousand dollars: Provided, that a contract or contracts may be entered into by the Secretary of War for such materials and work as may be necessary for prosecuting the project, not to exceed in the aggregate two hundred and fifty thousand dollars, exclusive of the amount herein appropriated: Provided further, That of the work herein contemplated The Florida East Coast Railway Company shall construct at its own expense, the basin adjacent to the wharves at Miami as herein described, and the portion of the channel from such basin to the east side of the basin proposed in the report herein mentioned, said channel to be not less than eighty-five nor more than one hundred feet in width, as shall be determined by the Secretary of War, and said basin and channel when so constructed by the railway company shall be open to the free and unobstructed use of the public: Provided further, That the amounts herein appropriated and authorized shall be expended in constructing and protecting the portion of the channel extending to the sea from the terminus of the channel to be constructed by the railway company, of such approximately uniform depth and of such width as will best serve the interests of navigation, and as can be constructed with the funds herein appropriated and authorized: Provided further, That before any part of the appropriation shall be expended, the said railway company shall enter into a contract with the United States satisfactory to the Secretary of War for the performing of its part of the work, and for securing in its portion of the channel and in the said basin practicable depths at least as great as are secured in the portion of the channel to be built by the United States, and for maintaining for a period of three years after the said eighteen-foot channel to be constructed by the Government shall have been obtained, an equal depth in the basin and the channel across the bay; and the said contract shall also provide that all craft resorting to Biscayne Bay for commercial purposes may use the wharves and warehouses thereon now owned or controlled, or hereafter built on Biscayne Bay by The Florida East Coast Railway Company, its successors or assigns for reasonable rates of compensation, and that proper facilities shall be given to all persons or corporations for the shipment of freight to or from said wharves on the railway tracks of the said company in Miami for like reasonable rates and upon just and reasonable conditions, and in case of disagreement such compensation and conditions shall be determined by the Secretary of War";

NOW THEREFORE, said parties covenant and agree with each other as follows:

Art. 1.—The party of the first part agrees to expend for the purposes mentioned in said item the money therein appropriated.

Art. 2.—The party of the second part, for and in consideration of the covenant contained in Article 1 of this contract agrees:

First.—To construct at its own expense adjacent to the wharves at Miami a basin sixteen hundred feet long and five hundred feet wide and of a practicable depth at least as great as is secured in a portion of the channel to be built by the party of the first part;

Second.—To construct, at its own expense, the portion of the channel from such basin to the east side of the refuge basin proposed in a report

of the Board of Engineer Officers of April 9, 1900, and published in House Document No. 6662, 56th Congress, 1st session; said channel to be not less than eighty-five feet wide, and of the same depth as the basin adjacent to the wharves at Miami; said basin and channel to be open to the free and unobstructed use of the public;

Third.—To maintain, for a period of three years after an eighteen-foot channel is obtained by the United States in the part of the channel to be built by it, and equal depth in the basin adjacent to the wharves at Miami and the channel across the bay.

Art. 3.—It is further agreed that all craft resorting to Biscayne Bay for commercial purposes may use the wharves and warehouses thereon now owned or controlled, or hereafter built on Biscayne Bay by The Florida East Coast Railway Company, its successors or assigns, for reasonable rates of compensation, and that proper facilities shall be given to all persons or corporations for the shipment of freight to or from said wharves, on the railway tracks of the said Company in Miami for like reasonable rates and upon just and reasonable conditions, and in case of disagreement such compensation and conditions shall be determined by the Secretary of War.

IN WITNESS WHEREOF, the parties have executed this agreement on the day first hereinbefore written, the name and corporate seal of the Florida East Coast Railway Company being affixed by its Secretary pursuant to a resolution of its Board of Directors passed on the 25th day of September, 1902, a copy of the record of which is hereto attached.

THE UNITED STATES OF AMERICA.
(Seal of U. S.) By (Signed) Elihu Root.

In Presence of—
(Signed) John C. Scofield.

FLORIDA EAST COAST RAILWAY COMPANY,
By (Signed) H. M. Flagler,
President.

In Presence of—
L. C. Haines.

Attest:
(Signed) J. C. Salter,
Secretary.

Florida East Coast Railway.

Income from Lines North of Homestead, for Fiscal Year Ending June 30, 1911.

Gross operating revenues of entire road, as reported to the Commission			$4,183,384.80
Deductions:			
Revenues from line south of Homestead	$ 97,787.94		
" " carrying construction material for extension	98,514.26		
" " " company's employees " "	8,993.07		
Total deductions from revenue			205,295.27
Operating expenses of entire road, as reported to the Commission	$2,603,710.19		$3,978,089.53
Deductions:			
Operating expenses line south of Homestead (62.24 per cent of $97,787.94*)	$60,863.21		
Expense hauling construction material for extension	98,514.26		
" " company's employees " "	8,993.07		
Total deductions from operating expenses		168,370.54	
			2,435,339.65
Net operating revenues from lines north of Homestead			$1,542,749.88
Deductions:			
Taxes ($173,641.13 less $14,210.78 south of Homestead)		$ 159,430.35	
Loss on dining and special car operation		2,107.00	
Hire of Equipment		97,480.82	
Rent of joint yards and terminals		10,823.52	
			269,841.69
Net operating income from lines north of Homestead			$1,272,908.19

*Note.—The ratio of the entire operating expenses to the entire operating revenues for the fiscal year ending June 30, 1911, was 62.24 per cent, as reported by the carrier.

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PETITIONER'S EXHIBIT NO. 13.

State of Florida, County of Dade.

Personally appeared before me Jno. B. Reilly, who, being duly sworn, says that he has made a fair valuation of the lands hereinafter described and that the figures annexed thereto are true and reasonable estimates of values as follows, to wit:

Lot Number	Block No.	Valuation	
10	64 North	$1,250.00	
11		1,000.00	
12		1,000.00	
13		1,000.00	
14		1,000.00	
16	86 North	1,100.00	
1	87 East	2,000.00	
2		1,500.00	
3		1,500.00	
4		1,500.00	
5		1,500.00	
6		2,000.00	
4	96 East	1,750.00	
5		1,750.00	
6		2,250.00	
9	97 North	1,100.00	
1	107 East	2,500.00	
2		2,000.00	
3		2,000.00	
10	124 North	1,500.00	
11		1,500.00	
12		2,000.00	
6	134 North	1,500.00	
7		2,000.00	
12	135 North	1,500.00	
13		1,500.00	
14		1,500.00	
15		1,500.00	
16		2,500.00	
17		2,000.00	
18		2,000.00	
Tract lying West of Main Line of F. E. C. Ry. and running south of Lot 4, Blk. 137 N., to the Miami River West to Ave. G. North to So. line of Lot 10, Block 137 N. E. to point of beginning—including Riparian Rights			
6 Lots at $750 each		4,500.00	
36 " " $600 each		21,600.00	
350 lineal feet on River and running back at $25.00 per fot		8,750.00	
Tract lying W. of Ave. D. south of Blk. 135 N., extending south to the Miami River and west to a line drawn parallel to the west line of Lot 12, Blk. 135 N. including about 400 lineal feet of Riparian Rights at $50.00 per lineal foot		20,000.00	
			$105,550.00
Lots 14, Block 106 North		$2,000.00	
" 15, Block 106 North		2,500.00	
		$4,500.00	
On these lots there are two small buildings used as garages either for autos or Road Rollers, each house is worth about $50.00		100.00	
			4,400.00
			$109,950.00

30, 1911, was 62.24 per cent, as reported by the county

Affiant says that the valuations are based upon the present value of said lots and lands according to the selling prices of said lots and lands and lots and lands adjacent thereto. (Signed) Jno. B. Reilly.

Sworn to and subscribed before me this 1st day of April, A. D. 1912.
(Signed) D. S. Jones,
Notary Public State at Large.

[Seal.]
My commission expires Dec. 21, 1912.

PETITIONER'S EXHIBIT No. 14.

Florida East Coast Railway Co.

Statement of Earnings and Expenditures for Months of January, 1912-1911.

	1912.	1911.
Operating Expenses:		
Maintenance of Way Structures	$ 58,623.87	$ 44,468.23
Maintenance of Equipment	50,512.47	56,342.41
Traffic Expenses	12,300.36	10,065.38
Transportation Expenses	203,829.18	130,418.56
General Expenses	10,942.65	7,275.80
Total Operating Expenses	$336,208.53	$248,570.38
Maintenance of Way and Structures:		
Superintendence	$ 3,482.02	$ 2,397.47
Ties	5,467.78	7,593.23
Rails	490.10	221.95
Other Track Material	1,103.95	854.82
Roadway and Track	26,395.20	18,997.47
Bridges, Trestles and Culverts	3,433.50	5,578.82
Grade Crossings, Fences, etc.	697.35	932.30
Signals and Interlocking Plants	302.72	32.66
Telegraph and Telephone Lines	211.22	277.10
Buildings, Fixtures and Grounds	6,953.95	5,234.71
Docks and Wharves	8,177.58	907.59
Roadway Tools and Supplies	980.48	703.20
Injuries to Persons	.....	15.40
Stationery and Printing	143.13	147.69
Other Expenses	2.50	12.50
Maintaining Joint Tracks, etc.	782.39	561.32
	$ 58,623.87	$ 44,468.23
Maintenance of Equipment:		
Superintendence	$ 2,230.68	$ 1,657.48
Repairs of Steam Locomotives	19,175.64	17,133.41
Depreciation of Steam Locomotives	589.77	5,157.09
Repairs of Passenger Train Cars	9,780.79	9,763.94
Depreciation of Passenger Train Cars	208.95	2,507.35
Repairs of Freight Train Cars	14,174.99	12,193.85
Renewal of Freight Train Cars	1,674.30	1,443.27
Depreciation of Freight Train Cars	300.51	3,654.70
Repairs of Work Equipment	574.46	710.02
Renewal of Work Equipment	.....	280.58
Depreciation of Work Equipment	79.42	838.88
Shop Machinery and Tools	1,087.75	544.20
Stationery and Printing	276.58	249.32
Maintaining Joint Equipment	358.63	198.32
	$ 50,512.47	$ 56,342.41
Traffic Expenses:		
Superintendence	$ 2,109.06	$ 1,738.23
Outside Agencies	2,146.91	2,442.29
Advertising	8,128.82	5,364.57
Traffic Association	120.24	170.29
Stationery and Printing	*204.67	348.60
Other Expenses	.....	1.40
	$ 12,300.36	$ 10,065.38

*In red ink in copy.

	1912.	1911.
Transportation Expenses:		
Superintendence	$ 3,054.15	$ 2,373.99
Dispatching Trains	1,212.38	986.27
Station Employees	21,873.77	19,051.47
Station Supplies and Expenses	2,674.50	1,815.78
Yard Masters and Their Clerks	1,373.90	1,571.10
Yard Conductors and Brakemen	5,238.72	3,418.35
Yard Switch and Signal Tenders	147.00	10.00
Yard Supplies and Expenses	233.64	175.00
Yard Enginemen	3,612.88	1,456.32
Enginehouse Expenses—Yard	987.71	568.31
Fuel for Yard Locomotives	4,651.52	3,094.70
Water for Yard Locomotives	407.19	189.12
Lubrication of Yard Locomotives	132.53	87.46
Other Supplies for Yard Locomotives	84.69	52.01
	$ 45,684.58	$ 34,849.88
Transportation Expenses—Cont.	$ 45,684.58	$ 34,849.88
Operating Joint Yards and Terminals—Dr.	2,355.50	2,500.56
Road Enginemen	19,459.89	13,018.35
Enginehouse Expenses—Road	7,064.84	6,515.00
Fuel for Road Locomotives	42,006.52	33,764.04
Water for Road Locomotives	3,368.20	3,150.42
Lubrication of Road Locomotives	1,004.82	1,003.76
Other Supplies for Road Locomotives	621.08	595.68
Road Trainmen	18,998.70	14,332.85
Train Supplies and Expenses	7,853.95	8,464.76
Coal and Ore Docks	415.50	.....
Crossing Flagmen and Gatemen	485.00	473.05
Draw Bridge Operation	1,446.25	1,245.40
Clearing Wrecks	1,024.29	909.45
Telegraph and Telephone—Operation	451.83	149.86
Stationery and Printing	1,647.42	2,834.90
Other Expenses	44,572.80	.....
Loss and Damage—Freight	1,964.58	2,132.76
Loss and Damage—Baggage	11.51	15.70
Damage to Property	296.85	206.45
Damage to Stock on Right of Way	2,355.05	1,271.00
Injuries to Persons	824.40	2,984.09
Operating Jt. Yds. and Ter.	*84.38	.....
	$203,829.18	$130,418.56
General Expenses:		
Salaries and Expenses of General Officers	$ 3,017.36	$ 2,576.73
Salaries and Expenses of Clerks, etc.	3,367.35	2,040.06
General Office Supplies and Expenses	261.36	277.53
Law Expenses	2,125.32	1,085.83
Insurance	885.62	828.95
Pensions	125.00	25.00
Stationery and Printing	844.55	215.56
General Administration Joint Tracks, etc.	245.37	127.30
Other Expenses	70.72	98.84
	$ 10,942.65	$ 7,275.80

*In red ink in copy.

PETITIONER'S EXHIBIT No. 15.

Florida East Coast Railway Co.

Statement of Earnings and Expenditures for Month of February 1912 and 1911.

	1912.	1911.
Operating Expenses:		
Maintenance of Way Structures	$ 49,637.67	$ 39,045.95
Maintenance of Equipment	46,355.17	55,909.87
Traffic Expenses	9,087.01	12,113.64
Transportation Expenses	172,080.31	142,285.19
General Expenses	8,810.69	7,228.31
Total Operating Expenses	$285,970.85	$256,582.96
Maintenance of Way and Structures:		
Superintendence	$ 3,517.37	$ 2,481.95
Ties	6,613.77	4,630.40
Rails	*1,777.76	39.58
Other Track Material	399.12	855.09
Roadway and Track	25,447.74	17,242.76
Bridges, Trestles and Culverts	4,440.22	4,027.77
Grade Crossings, Fences, etc.	1,101.97	764.97
Signals and Interlocking Plants	24.62	25.75
Telegraph and Telephone Lines	38.22	292.47
Buildings, Fixtures and Grounds	5,482.60	5,774.88
Docks and Wharves	2,011.80	956.23
Roadway Tools and Supplies	1,019.70	1,260.43
Injuries to Persons	52.90	.....
Stationery and Printing	279.80	118.16
Other Expenses	22.00	14.00
Maintaining Joint Tracks, etc.	963.60	561.51
	$ 49,637.67	$ 39,045.95
Maintenance of Equipment:		
Superintendence	$ 2,147.17	$ 1,813.38
Repairs of Steam Locomotives	18,076.91	20,076.46
Depreciation of Steam Locomotives	588.79	5,157.09
Repairs of Passenger Train Cars	8,906.57	9,905.37
Depreciation of Passenger Train Cars	291.27	2,507.35
Repairs of Freight Train Cars	14,193.15	10,727.85
Depreciation of Freight Train Cars	350.14	3,645.60
Repairs of Work Equipment	602.19	658.06
Depreciation of Work Equipment	86.31	836.72
Shop Machinery and Tools	583.43	188.28
Stationery and Printing	192.18	197.62
Maintaining Joint Equipment	337.06	196.09
	$ 46,355.17	$ 55,909.87
Traffic Expenses:		
Superintendence	$ 2,043.05	$ 1,750.95
Outside Agencies	2,426.34	2,386.61
Advertising	4,277.59	7,251.50
Traffic Association	153.27	180.09
Stationery and Printing	186.76	544.49
	$ 9,087.01	$ 12,113.64

*In red ink in copy.

	1912.	1911.
Transportation Expenses:		
Superintendence	$ 2,870.28	$ 2,582.62
Dispatching Trains	1,553.89	970.00
Station Employees	23,228.66	19,479.53
Station Supplies and Expenses	2,707.97	2,114.89
Yard Masters and Their Clerks	1,525.70	1,636.50
Yard Conductors and Brakemen	5,590.27	3,930.10
Yard Switch and Signal Tenders	179.25	10.00
Yard Supplies and Expenses	213.55	200.04
Yard Enginemen	3,336.02	1,496.03
Enginehouse Expenses—Yard	1,196.78	555.13
Fuel for Yard Locomotives	4,839.95	2,617.87
Water for Yard Locomotives	156.67	237.30
Lubrication of Yard Locomotives	385.09	73.32
Other Supplies for Yard Locomotives	80.98	37.03
	$ 47,865.06	$ 35,940.36
Transportation Expenses—Cont.	$ 47,865.06	$ 35,940.36
Operating Joint Yards and Terminals—Dr.	2,309.22	1,080.65
Road Enginemen	18,035.82	14,723.05
Enginehouse Expenses—Road	8,028.49	6,526.25
Fuel for Road Locomotives	45,218.33	44,768.35
Water for Road Locomotives	3,669.75	3,099.52
Lubrication of Road Locomotives	993.96	843.17
Other Supplies for Road Locomotives	602.53	425.83
Road Trainmen	18,624.55	16,725.60
Train Supplies and Expenses	8,355.53	8,080.65
Coal and Ore Docks	110.85	.....
Crossing Flagmen and Gatemen	485.00	530.15
Draw Bridge Operation	1,538.08	1,292.03
Clearing Wrecks	1,006.61	542.37
Telegraph and Telephone—Operation	385.11	151.62
Stationery and Printing	2,125.79	3,190.66
Other Expenses	4,485.18	51.59
Loss and Damage—Freight	1,294.07	781.53
Loss and Damage—Baggage	163.70	8.64
Damage to Property	213.25	218.15
Damage to Stock on Right of Way	2,891.10	1,993.17
Injuries to Persons	3,761.45	1,311.85
Operating Jt. Yds. and Ter.—Cr.	*83.12	.....
	$172,080.31	$142,285.19
General Expenses:		
Salaries and Expenses of General Officers	$ 2,788.55	$ 2,765.62
Salaries and Expenses of Clerks, etc.	3,365.48	2,301.55
General Office Supplies and Expenses	260.35	181.12
Law Expenses	898.29	557.00
Insurance	885.62	828.95
Pensions	125.00	.....
Stationery and Printing	206.47	289.79
General Administration Joint Tracks, etc.	240.40	149.11
Other Expenses	40.53	155.17
	$ 8,810.69	$ 7,228.31

*In red ink in copy.

PETITIONER'S EXHIBIT No. 16.

Estimated increase in wages paid Engineers and Firemen, also Conductors and Trainmen for twelve months ending December 31, 1912, over same period of 1911, due to increase in rate of pay, effective January 1, 1912. Arrived at by using actual time made during 1911 computed on rate paid for the first three months (January, February and March) of 1912

	1912.	1911.	Increase.	%
Engineers	$129,120.65	$114,215.89	$14,904.76	13.04
Firemen	55,886.55	49,841.48	6,045.07	12.13
Conductors	80,351.28	74,161.43	6,189.85	08.34
Trainmen	112,350.96	102,628.90	9,722.06	09.48

PETITIONER'S EXHIBIT No. 17.

Estimated increase in wages paid Section Foremen and Laborers for twelve months ending December 31, 1912, over same period of 1910, due to increase in rate of pay, effective April 1, 1911. Arrived at by using actual time made during 1910, computed on raid paid for the first three months (January, February and March) of 1912.

	1912.	1910.	Increase.	%
Section Foremen	$ 42,276.13	$ 40,045.00	$ 2,231.13	05 57
Section Laborers	163,946.74	146,535.40	17,411.34	11.88

PETITIONER'S EXHIBIT No. 18.

Rate of Pay Paid Enginemen, Firemen, Conductors, Baggagemen, Flagmen, Brakemen for 1911, as Compared with 1912; also Section Foremen and Section Men for 1910 as Compared with 1912.

		Passenger.	Through Frt.	Local Frt.	Work.	Yard.	
ENGINEMEN.							
1911	Per Mile.	.0385	.047	.050	4.45 Per day	3.90 Per Day	(See Note)
1911						3.65 Per Day	(See Note)
1911	Overtime Per Hr.	.40	.40	.40	.35	.35	All
1912	Per Mile.	.0425	.0515	.0575	5.00 Per Day	4.25 Per Day	All
1912	Overtime Per Hr.	.60	.60	.60	.50	.45	All
FIREMEN.							
1911	Per Mile.	.0154	.0188	.020	1.78 ½ PerD	1.70 Per Day	
1911	Overtime Per Hr.	.16	.16	.16	.14	.14	
1912	Per Mile.	.0191	.0232	.0259	2.25 Per Day	1.91 Per Day	
1912	Overtime Per Hr.	.18	.18	.18	.18	.18	
CONDUCTORS.							
1911	Per Day.	5.00	6-15 Year Men.				
1911	Per Day.	4.00	3 Branch Line Men.				
1911	Per Day.	4.50	4.00	4.60	4.25	For Balance.	
1911	Overtime Per Hr.	.40	.40	.40	.40		
1912	Per Day.	5.50	6-15 Year Men.				
1912	Per Day.	4.35	3 Branch Line Men.				
1912	Per Day.	5.00	4.35	5.00	4.60	For Balance.	
1912	Overtime Per Hr.	.40	.40	.40	.40		
BAGGAGEMEN.							
1911	Per Day.	2.40					
1911	Overtime Per Hr.	.25					
1912	Per Day.	2.85					
1912	Overtime Per Hr.	.25					
FLAGMEN.							
1911	Per Day.	2.35					
1911	Overtime Per Hr.	.25					
1912	Per Day.	2.65					
1912	Overtime Per Hr.	.25					
BRAKEMEN.							
1911	Per Day.		2.50	3.05	2.60		
1911	Overtime Per Hr.		.25	.25	.25		
1912	Per Day.		2.65	3.25	2.80		
1912	Overtime Per Hr.		.25	.25	.25		
SECTION FOREMEN.							
1910	Per Day.	1.78					
1912	Per Day.	1.95					
SECTION MEN.							
1910	Per Day.	1.25					
1912	Per Day.	1.50					

(Note) $3.90 Per Day, South Jacksonville, St. Augustine, W. Palm Beach.
(Note) $3.65 Per Day for Balance.

EXHIBIT FILED BY INTERVENER, STATE RAILROAD COMMISSION OF FLORIDA.

Florida East Coast Railway.

Office of the Traffic Manager.

J. P. Beckwith,
Traffic Manager.

St. Augustine, October 7, 1904.

Hon. Jefferson B. Browne, Chairman,
Hon. Jno. L. Morgan,
Hon. R. Hudson Burr,
Railroad Commissioners,
Tallahassee, Fla.

Gentlemen:

PASSENGER RATES: Cutler Extension.

Referring to application that we made to you for the establishment of rates on Fruits and Vegetables from points on the Extension that is being constructed south of Miami.

I neglected at the time to take up the question of passenger rates. We have now changed the line and propose, if reports to be made by Engineers who are now in the field justifies building it, to construct the line to Key West, but the territory through which it will pass being undeveloped, construction work will be very expensive, and on that account we would ask your Honorable Body to authorize for our use a rate of four (4) cents per mile for the line south of Miami until such time as the development of the country will permit us to put in the rate of three (3) cents per mile the same as we are now working on the main line.

I would like to have your decision as early as possible so as to let it accompany the Engineers' report to our President.

Yours truly,
(Sd) J. P. Beckwith,
Traffic Manager.

State of Florida, Leon County.

I, Newton A. Blitch, Acting Chairman of the Railroad Commissioners of the State of Florida, do hereby certify that the foregoing is a true and correct copy of a communication which now appears on file and of record in the office of the Railroad Commissioners of the State of Florida.

Witness my hand as Acting Chairman of the Railroad Commissioners of the State of Florida this 22d day of March, 1912.

(Signed) Newton A. Blitch,
Acting Chairman.

Order No. 62. Railroad Commission, State of Florida.

In the matter of application of Florida East Coast Railway for authority to charge 4c per mile for the transportation of passengers over its line south of Homestead.

Whereas the Florida East Coast Railway is contemplating the extension of its line from its present terminus at Homestead to Key West,

And Whereas the territory through which it will pass in its extension from its present terminus at Homestead to Key West is undeveloped and construction work will be very expensive, and it will be many years before said extension will be a remunerative investment, and has made application to the Railroad Commissioners of the State of Florida for authority to use a rate of 4c per mile for the transportation of passengers over its line south of Homestead,

And Whereas so much of said extension as is completed to Homestead traverses through a well-populated and cultivated territory,

It is hereby ordered that the said Florida East Coast Railway be, and is hereby authorized to charge 4c per mile for the transportation of passengers over its extension from its present terminus at Homestead until such time as the development of the country through which it will pass, and the volume of business will justify the operation of a 3c per mile rate.

Done and ordered by the Railroad Commissioners of the State of Florida, in session at their office in the City of Tallahassee, Florida, this 2d day of November, A. D. 1904.

(Sd) J. L. Morgan,
Acting Chairman.

Attest: R. C. Dunn,
Secretary.

State of Florida, Leon County.

I, Newton A. Blitch, Acting Chairman of the Railroad Commissioners of the State of Florida, do hereby certify that the foregoing is a true and correct copy of Order No. 62 entered by the Railroad Commissioners of the State of Florida on the 2d day of November, 1904, as the same appears of record in the office of the Railroad Commissioners of the State of Florida.

Witness my hand as Acting Chairman of the Railroad Commissioners of the State of Florida this 22d day of March, 1912.

(Signed) Newton A. Blitch,
Acting Chairman.

Objection to Preceding Exhibit.

And now comes the petitioner, Florida East Coast Railway Company, by Alex. St. Clair-Abrams and Frederick C. Bryan, its attorneys and solicitors, and objects to the exhibit filed by the intervener, State Railroad Commission of Florida, as competent testimony in this case, being exhibit showing application to have rates fixed on passengers, and action of the State Railroad Commission, on the following grounds:

1. That said exhibit does not show that the extension to Key West began at Homestead.

2. Because the application of the Florida East Coast Railway Company distinctly asked for a 4-cent rate per mile for passengers for the line South of Miami and not for the line South of Homestead.

3. Because the preamble to the action of the State Railroad Commission is an absolute misstatement and perversion of facts when it recites that the application was made for a 4-cent rate per mile over its line South of Homestead.

4. Because at the time of the application there was no line of railroad whatsoever South of Homestead that a rate could be applied to.

5. That the action of the State Railroad Commission was arbitrary on its part and not responsive to the application of the Florida East Coast Railway Company.

(Signed) Alex. St. Clair-Abrams,
(Signed) Frederick C. Bryan,
Solicitors for Petitioner.

.....	300,457.29	[illegible]	7,981.60	155	264,204.33	237,072.20	[illegible]	
to 11.....	59,364.95	51,383.35	*2,472.53	*252	62,137.05	44,827.17	17,309.88	386
to 21.....	7,348.27	9,820.80						
.....	548,757.09	499,211.60	49,545.49	099	2,542,022.36	2,284,964.81	257,057.55	112
.....	49,637.67	39,045.95	10,591.72	271	437,636.19	344,217.28	93,418.91	271
.....	46,355.17	55,909.87	*9,554.70	*171	379,714.97	352,728.96	26,986.01	077
.....	9,087.01	12,113.64	*3,026.63	*250	57,661.97	51,568.17	6,093.82	118
.....	172,080.31	142,285.19	29,795.12	209	962,314.53	795,410.72	166,903.81	210
.....	8,810.69	7,228.31	1,582.38	219	72,561.32	62,301.05	10,260.27	165
.....	285,970.85	256,582.96	29,387.89	115	1,909,888.98	1,606,226.16	303,662.82	189
.....	262,786.24	242,628.64	20,157.60	083	632,133.38	678,738.65	*46,605.27	*069
.....	2,678.30		2,678.30	1000	2,678.30		2,678.30	1000
.....	3,755.64		3,755.64	1000	4,058.97		4,058.97	1000
.....	*1,077.34		*1,077.34	*1000	*1,380.67		*1,380.67	*1000
.....	261,708.90	242,628.64	19,080.26	079	630,752.71	678,738.65	*47,985.94	*071
s.....	15,500.00	15,500.00			124,000.00	111,641.13	12,358.87	111
.....	246,208.90	227,128.64	19,080.26	085	506,752.71	567,097.52	*60,344.81	*106

:k—operated on February 28, 1911, 583.47, including miles not in U. S. on February 29, 1912; 629.65 including miles not
ed during the month of February, 1912, 629.65. Average mileage operated during the period July 1, 1911-February 29, 1912,

Exhibit 21. Mar. 25, 1912.

LAND RECEIVED BY F. E. C. RY. CO. FROM SHORT LINES.

State of Florida, County of St. Johns.

Personally appeared before me James E. Ingraham, who, being duly sworn, says he is Vice-President of the Florida East Coast Railway Company, and is familiar with the number of acres of land received by said company with the short lines, as follows:

Total number of acres received	233,079.99
Total number of acres sold prior to transfer to Model Land Company	176,490.61
Gross amount received for land sold	$91,179.97
Expenses of Land Department handling said lands	$247,086.85
Loss	$155,906.88
Total number of acres turned over to Model Land Company of lands received with the short lines	56,589.38

[Signed] JAMES E. INGRAHAM.

Sworn to and subscribed before me this 20th day of May, A. D. 1912.

[Signed] CHAS. S. BRUMLEY,
Notary Public, State at Large.

(Seal.) My Commission expires March 13th, 1913.

1160

INTERSTATE COMMERCE COMMISSION

Washington

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of that portion of the record in the case of the Florida Fruit & Vegetable Shippers Protective Association against the Atlantic Coast Line Railroad Company and others, docket No. 1168, itemized below, the originals of which are now on file and of record in the office of said Commission:

Petition, filed July 3, 1907.

Answer of Florida East Coast Railway Company, filed July 30, 1907.

Transcript of testimony taken at Washington, D. C., February 6 and 7, 1908.

Transcript of testimony taken at Jacksonville, Fla., March 18 and 19, 1908.

Brief for complainant, filed April 21, 1908.

Brief for Florida East Coast Railway Company, filed May 11, 1908.

Report and order of Commission June 25, 1908.

Supplemental petition, filed January 27, 1909.

Answer of Florida East Coast Railway Company to supplemental petition, filed February 8, 1909.

Supplemental petition, filed November 16, 1910.

Answer of Florida East Coast Railway Company to supplemental petition, filed December 13, 1910.

Intervening petition of Railroad Commissioners of Florida filed February 1, 1911.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 30th day of March, 1912.

[Seal Interstate Commerce Commission.]

JOHN H. MARBLE,
Secretary.

PETITION BEFORE THE INTERSTATE COMMERCE COMMISSION

1

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Atlantic Coast Line Railroad Company;
Seaboard Air Line Railway; Southern Railway Company;
Florida East Coast Railway Company, et al.

Docket No. 1168.

I. That complainant is an association formed by the
2 growers, buyers and shippers of fruits and vegetables in the State of Florida for their mutual benefit and advantage in the growing, shipping, selling and disposing of fruits and vegetables grown and raised in the State of Florida, with headquarters and offices in the City of Jacksonville, Florida.

II. That the defendants herein are common carriers engaged in the transportation of passengers and property, continuous carriage of shipment, in some cases wholly by railroad, in others partly by railroad and partly by water, between points in the State of Florida and points in the States of New York, Pennsylvania, Massachusetts, Ohio, Maryland, Illinois, Michigan, Wisconsin, Missouri, Nebraska, Texas and between points in Florida and points in other States along the transportation lines of said defendants and as such common carriers with their allied connections are subject to the provisions of the Act to regulate commerce, approved February 4th, 1887, and acts amendatory thereof or supplementary thereto.

III. That the freight rates on citrus fruits, celery, lettuce, potatoes, peaches, tomatoes, pineapples strawberries and all other fruits and vegetables not otherwise specified from points in Florida to points in the above named States and points in other States along the transportation lines of said defendants are unreasonably high, and confiscatory of the rights and property of the growers and dealers in said fruits and vegetables in the State of Florida.

IV. That the rates of freight charged and received by said railroads and steamship company and other connecting carriers for the transportation of said fruits and vegetables from

points in Florida to said points in said other States are unjust, unreasonable and illegal, and they are far in excess of the actual value of the services rendered in such transportation.

V. That the said fruits and vegetables grown in Florida come into competition with similar products from Cuba, Jamaica and Porto Rico and California and other States, and the rates of freight for the transportation of said products from points in Florida to points in other States named in paragraph 2, supra, are far in excess of the freight rates charged and received by the defendants for similar transportation of like fruits and vegetables from points in California and other States and Cuba, Porto Rico, Jamaica and to the same points in other States which furnish the principal markets for said products; and the Florida fruit and vegetable industries are greatly impaired by reason of the great difference in freight rates and the unreasonable and discriminating rates on Florida fruits and vegetables, and the said fruits and vegetables grown in Florida cannot successfully compete with the same fruits and vegetables grown in California, Cuba, Jamaica and Porto Rico, and other States and countries.

VI. That the rate charged for the transportation of
3 citrus fruits from Los Angeles California, to New York City, New York, is $1.15 per hundred pounds, and the rate for the transportation of citrus fruits from Arcadia, Florida, to New York City, New York, is $0.9437 per hundred pounds, while the distance from Los Angeles to New York City is 3,261 miles, and the all-rail distance from Arcadia to New York City is 1,203 miles; that the rate on said fruits from Los Angeles to all the principal eastern points is the same as the rate to New York, and the distance between said points vary from about 2,000 to 3,500 miles, while the rates on said fruits from Arcadia to the same points, being less than half the distance from Los Angeles, range from $0.906 to $1.21 per hundred pounds; that the rates on citrus fruits from other points in Florida to said principal markets correspond with the rates from Arcadia; that the freight rate on citrus fruits from Cuba, Jamaica and Porto Rico to New York is twenty-six cents per standard box, and the rate on said fruits from Arcadia, Florida, via Clyde Steamship Company from Jacksonville, Florida, to New York, is sixty cents per standard box; that the rates on tomatoes from points in Florida to points in other States are much higher than the rates on tomatoes from Cuba, Jamaica and Porto Rico, notwithstanding the fact that Florida is much nearer said markets than are said islands, and the means of transportation from Florida are equally as advantageous as from said islands; that the rates on celery from

Sanford, Florida, to the principal markets thereof in other States are almost equal to, and in some cases greater than, the rates to the same markets from Los Angeles, California, notwithstanding the fact that the distance to said markets from Los Angeles, California, are usually double the distance from Sanford, Florida, and an even greater discrimination against Florida fruits and vegetables exists in the refrigerator charges; that there is a similar discrimination in rates against all points in Florida for the transportation of all other fruits and vegetables to such points in other States, and similar discrimination of freight rates exist in favor of other States producing like products.

VII. That the through rates for the transportaiton of said fruits and vegetables from points in Florida to said points in other States and intermediate points have remained practically stationary for a period of about twenty years, notwithstanding the rapid growth and development of the State of Florida in all lines of business and shipping interests, and especially in the production of said fruits and vegetables.

VIII. That complainant is informed and believes, and so alleges, that through rates via steamship from Savannah, Georgia, to New York and Boston and other seaport cities on the Atlantic Coast in the United States are the same as from Jacksonville, Florida, via the Clyde Steamship Company, and that the said Clyde Steamship Company, in receiving
4 said fruits and vegetables, rebate to all or a part of said railways the usual rate charged by said railways for the transportation of said fruits and vegetables from Jacksonville to Savannah.

IX. That the said defendants do not furnish carload rates for the shipments of said fruits and vegetables, except cabbage, potatoes, watermelons and cantaloupes from all points in Florida to points on said railways in other States, although the shipments are ample to justify carload rates to all points, and that, in order to provide proper facilities for the economic transportation of fruits and vegetables a minimum of 20,000 pounds per carload on Florida fruits and vegetables moving under ventilation and a minimum of 15,000 pounds on Florida fruits and vegetables moving under refrigeration should be furnished by the defendants for the transportation of such fruits and vegetables from loading points, or place of production, to all markets in other States along their said line of transportation, which your complainant alleges would be reasonable and just; that five cents per hundred pounds per hundred miles would be a just and reasonable rate by the carload or 20,000 pounds under ventilation and 15,000 pounds under

refrigeration for the transportation of all fruits and vegetables aforesaid excepting strawberries; that a minimum carload of 100 crates of 32 quarts each should be established for the transportation of strawberries to all points and your complainant alleges that a rate of $1.80 for said crate shipped as aforesaid would be a reasonable and just rate from Lawtey and Starke, Florida, to New York City, New York, whereas the defendants now require 200 crates to the carload.

X. That the defendants do not furnish proper equipment for the refrigeration of fruits and vegetables transported by them from points in Florida to points in other States along their transportation lines; that they charge for underweight in shipments by reason of such improper equipment; and that the refrigeration rates on shipments of fruits and vegetables to said points in other States are unjust and unreasonably high.

XI. That by reason of the premises defendants have been, and still are, subjecting said growers and shippers of fruits and vegetables over defendants' lines of railway to the payment of unjust and unreasonable rates of transportation, as above set forth, and have been and still are subjecting such growers and shippers, their traffic and said points in the State of Florida to unjust discrimination and to undue and unreasonable prejudice and disadvantage, in violation of the Act to regulate commerce, as amended, and more particularly sections one, two and three thereof.

Wherefore complainant prays that defendants be required to promptly answer the charges herein; that after due hearing and investigation an order be made commanding said defendants to wholly cease and desist from the aforesaid violations of law; that the Commission prescribe what would be
5 reasonable and just as maximum rates for the future for the transportation of said fruits and vegetables from points in Florida to said points in other states along the transportation lines of the defendants; that reasonable refrigeration rules and rates may be established; that carload rates may be established for said transportation and that a minimum carload shall be prescribed; and that such order or orders may be made requiring the defendants to conform to the findings of the Commission as it may deem necessary in the premises.

Dated at Jacksonville, Florida, this 29th day of June, A. D. 1907.

FLORIDA FRUIT AND VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

By J. C. CHASE,
Secretary and Treasurer.

1 FLORIDA EAST COAST RAILWAY COMPANY

Answer of said company to the complaint of the Florida Fruit and Vegetable Shippers' Protective Association, made to the Interstate Commerce Commission under date of 29th of June, 1907, signed by J. C. Chase, Secretary & Treasurer.

[Filed July 30, 1907]

TO THE INTERSTATE COMMERCE COMMISSION

In reply to the communication of Edwin A. Moseley, Secretary of your Commission, referred to in Docket No. 1168, calling on the Florida East Coast Railway Company for an answer to the complaint against this and other roads by an Association styled "Florida Fruit and Vegetable Protective Association," dated 29th of June, 1907; signed by J. C. Chase, Secretary and Treasurer, a copy of which is annexed to your communication, this Company answering thereto says:

1st.,—The Florida East Coast Railway Company admits that it is subject to an act of Congress to regulate Commerce, approved February 4, 1887, but denies that there is anything in the rate of freights charged by it on fruits and vegetables which calls for any action on the part of your Commission.

2nd.,—The Florida East Coast Railway Company denies, so far as said Company is concerned, the statement made in the complaint that the rates on fruit and vegetables are unreasonably high and unnecessary, and in answer to this charge says: that the rates now charged are the rates for freight and passengers authorized and allowed by the Florida State Railroad Commission to be charged by this Company and are not now, and have not been for over twelve years past, sufficient to produce an income to this Company large enough to pay its operating expenses and fixed charges. That, as a matter of fact as the books and records of this Company show, there has been for the past twelve years a very large deficit, of more than $254,000.00 annually in the receipts of this Company over its necessary expenditures and fixed charges.

3rd.,—Further answering the Florida East Coast
2 Railway Company informs and advises the Interstate Commerce Commission, that owing to the annual deficit for the past twelve years, the Colonial Trust Company, of the State of New York, have filed a Bill in Chancery against this Company and against the Railroad Commission of the State of Florida, enjoining them from further reduction of rates, and

that the Judge of the Circuit Court of the United States, for the southern District of Florida, has granted an injunction which injunction is pending, and the Florida East Coast Railway Company represents to this Commission, that it is forbidden by said injunction to reduce its rates and that any further reduction of rates will still further increase the deficit and seriously jeopardize the solvency of this Company.

4th.,—The Florida East Coast Railway Company denies that the rates it is allowed by the Florida State Railroad Commission to charge are unreasonably high and assert that they are not unreasonable.

That this Company has to operate and maintain an average of 14 miles of railroad for an average of about 1200 inhabitants to the mile of said railroad and that the volume of freight of all kinds including fruit and vegetables is not sufficiently large to enable this Company to transport the same at any less price that it now charges. That the rates charged for fruit and vegetables is the rate authorized by the Florida State Railroad Commission as reasonable and proper.

5th.,—The Florida East Coast Railway Company further answering informs the Interstate Commerce Commission that the rate of freight received by it for fruit and vegetables are proportional rates and these proportional rates are made for its use by the Florida State Railroad Commission. That this Company does not pro rate with any railroads or steamship lines doing an Interstate Commerce business, but simply
3 adds the rate authorized by the Interstate Commerce Commission from Jacksonville to points outside of the State to the rates authorized by the Florida State Railroad Commission.

6th.,—Further answering, the Florida East Coast Railway Company says, that it is not now a participating carrier in the movement of fruits and vegetables from Arcadia to New York, or Cuba, Jamaica or Porto Rico to New York to other points. That its freight traffic in fruits and vegetables is now confined to the fruits and vegetables raised in the State of Florida, this Company having found it impracticable and unprofitable to transport fruit or vegetables over its line from any foreign ports.

7th.,—The Florida East Coast Railway Company denies, so far as it is concerned, the assertion made in the complaint that the rates of freight applicable to fruits and vegetables from points on its line of road have remained unchanged for a period of twenty years as stated in the complaint, and says that so far as it is concerned, such statement is not true. That within the past five years, to-wit: Since the 12th day of Sep-

tember 1902, there has been a reduction of an average of 17 1-2 per cent on its rates of freights on vegetables on its line of road. That during the same period of time, to-wit: Since September 1st, 1902, there has been an average reduction of 12 1-2 per cent in its rates on pineapples and oranges, all of which constitutes the products referred to in the complaint.

8th.,—The Florida East Coast Railway Company further answering says, that it is not a participating carrier from Savannah, Georgia, or Jacksonville, Florida, via any steamship lines; that it issues bills of lading on all fruits delivered to it, to be shipped via any route, whether railroad or steamship, and delivers same to the connecting railroad or steamship line at Jacksonville, Fla., at rates allowed to it
4 by the Railroad Commission adding the rates authorized from Jacksonville to New York and other points.

9th.,—The Florida East Coast Railway Company further answering says, that the rates made by the Florida State Railroad Commission, for the use of the Florida East Coast Railway Company, specify that shipments shall be handled in any quantity and does not require this Company to charge any less rate for carload lots.

That the financial condition of this Company is such that any reduction of the rates now fixed, making rates by carload lots less than for smaller lots, would still further increase its deficit.

10th.,—The Florida East Coast Railway Company denies the statement that it does not furnish proper equipment for the refrigeration of fruit and vegetables and says that it furnishes refrigerating and ventilating cars to all shippers applying for same and affords them the fullest facilities for the shipment of fruits and vegetables.

11th.,—The Florida East Coast Railway Company further answering denies the allegation of the plaintiff, in so far as it applies to the Florida East Coast Railway Company, that the proportional rates received by it are unjust or unreasonable and says that, considering the extent of territory it has to cover and the limited volume of freight offered to it, its rates are reasonable and just and that the complainants have no just and proper ground for complaint against this Company.

12th.,—In conclusion, the Florida East Coast Railway Company hereby offers to prove each and every allegation of this answer and denies explicitly every material allegation of the complainant which charges it with obtaining unjust and unreasonable or illegal rates, or with charging rates in excess

of the service rendered in the transportation of fruits and vegetables, and says that the volume of business on this line of road is not and never has been sufficiently large to warrant its transporting fruit and vegetables at any lower figure than now authorized by the Florida State Commission, and that any further reduction of rates would amount to the confiscation of its property.

The Florida East Coast Railway Company having fully answered the complaint referred to respectfully asks that the said complaint be dismissed as against it.

Jacksonville, Fla.,
July 24th, 1907. (Signed) J. P. Beckwith,
Traffic Manager,
Fla. East Coast Ry. Co.

(signed)
Alex. St. Clair-Abrams.
Attorney & Solicitor for
Florida East Coast Railway Company.
2—2587

PETITIONER'S EXHIBIT NO. 26.

Testimony taken before the Interstate Commerce Commission at Washington, D. C., February 6, 1908, *et seq.*

[Not printed; by permission of the court]

PETITIONER'S EXHIBIT NO. 25.

Testimony taken before Commissioner Prouty at Jacksonville Fla., March 18 and 19, 1908.

[Not printed; by permission of the court]

BEFORE THE INTERSTATE COMMERCE COMMISSION

FLORIDA FRUIT AND VEGETABLE SHIPPERS' ASSOCIATION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY et als.

BRIEF FOR COMPLAINANT

[Filed April 21, 1908.]

WILLIAM A. GLASGOW, JR.,
Counsel for Complainant.

Lawyers' Book Printing Co., 1111 Arch St.

FLORIDA FRUIT AND VEGETABLE SHIPPERS' ASSOCIATION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, et al.

BRIEF FOR COMPLAINANT

Complaint, dated June 29th, 1907, was filed in this case by the Florida Fruit and Vegetable Shippers' Association (hereinafter referred to as the Florida Association) against the several Railroads engaged in transportation of fruit and vegetables, and while the record has grown to great size by the examination of witnesses and the filing of exhibits, the essential facts shown at the hearings are embraced within comparatively narrow limits.

The membership of the Florida Association at the time of filing this petition was between one hundred and fifty (150) and two hundred (200), and now is about five hundred and twelve (512), representing fully seventy-five (75) per cent. of the output from Florida of oranges, grape-fruit and pineapples,

and between sixty (60) and seventy-five (75) per cent of the carload movement of vegetables (Record, p. 978-9).

2 By referring to the petition it will be seen that complaint is made as follows:

1. That the freight rates on citrus fruits, celery, lettuce, potatoes, peaches, tomatoes, pineapples, and all other fruits and vegetables not otherwise specified, from points in Florida to points in other States, wholly by railroad or partly by railroad and partly by water, are unreasonably high, unjust, illegal and are far in excess of the actual value of the services rendered in such transporation. (See Complaint, Sections III and IV.)

2. Fruit and vegetables grown in Florida come into competition in the principal markets with the same products from Cuba, Jamaica, Porto Rico, California and other States, and by reason of the high rates of transportation charged on Florida fruit and vegetables in comparison with the rates charged from the above competing points, the Florida "fruit and vegetable industries are greatly impaired" and "cannot successfully compete with the same fruit and vegetables grown in" the other places above set forth. (See Complaint, Section V.)

3. The Complaint then sets forth a comparison of rates on fruit and vegetables between points in Florida, California, Cuba, Porto Rico and Jamaica, and gives their comparative distances, all of which more fully appears in the exhibits filed at the hearings. It is charged that rates on Florida fruits and vegetables have remained practically "stationary for a period of twenty (20) years notwithstanding" that the volume of traffic from this source, furnished to the carriers, has greatly increased. (See Complaint, Sections VI and VII.)

3 4. It is further charged that through rates via steamship from Savannah, Georgia, to New York, and Boston and other seaport cities on the Atlantic Coast, are the same as from Jacksonville, Florida, via the Clyde Steamship Company, and that the latter Steamship Company rebates to all or a part of the railroads the usual rate charged by said railroads for the transportation of said fruit and vegetables from Jacksonville to Savannah. (See Complaint, Section VIII.)

5. It is charged that the defendants do not furnish carload rates for the shipment of fruits and vegetables, except cabbage, potatoes, watermelons and cantaloupes, from all points in Florida to points in other States, although the shipments are ample to justify carload rates to all points; that the minimum carload moving under ventilation should be twenty thousand (20,000) pounds, and under refrigeration fifteen thousand (15,000) pounds; and that five cents (5c.) per hundred pounds per hundred miles from loading points or place of production

to all markets would be a reasonable and just carload rate, with the minimum above set forth. As to strawberries, it is charged that a minimum carload of one hundred (100) crates of thirty-two (32) quarts each should be established, and that a reasoable and just rate thereon would be $1.80 per crate from Starke and Lawtey to New York City; whereas the defendants now require two hundred (200) crates to the carload. (See Complaint, Section IX.)

6. It is charged that the defendants do not furnish proper equipment for the refrigeration of fruits and vegetables transported by them from points in Florida to points in other States; that the defendants charge for underweight in shipments by reason of such improper equipment; that the refrigeration rates on fruits and vegetables to points in other States are unjust and unreasonably high; that the defendants subject the growers and shippers of fruits and vegetables from Florida to unreasonable and unjust rates of transportation, and subject such growers and shippers to unjust discrimination and to undue and unreasonable prejudice and disadvantage in violation of the Act to Regulate Commerce as amended, and more particularly Sections one, two and three thereof. (See Complaint, Sections X and XI.)

7. The prayer of complainant is that defendants be required to answer; that a hearing and investigation be had; that an order be made requiring the defendants to wholly "cease and desist" from the violations of law above set forth; that this Commission prescribes reasonable and just maximum rates for the transportation of fruits and vegetables from points in Florida to points in other States along the transportation lines of defendants; that reasonable refrigeration rules and rates be established; that carload rates may be established for said transportation, and that a reasonable and proper carload minimum be established and prescribed, and that this Commission make such order or orders as may be necessary to require the defendants to conform to the findings in this case.

Answers are filed by the several defendants practically denying the allegations of the complaint, and after the coming in of the answers hearings were had by the Commission at Washington, D. C., and Jacksonville, Florida, at which a number of witnesses were examined and a volume of exhibits was filed by the defendants, the value of which in aiding a proper conclusion in this case has not yet appeared.

5 It is proper to say that an answer was filed by the Clyde Steamship Company denying that it is in any way subject to the provisions of the Act to Regulate Commerce, ap-

proved February 4th, 1887, and the acts amendatory thereof or supplemental thereto.

This question of jurisdiction can be disposed of briefly and it will be desirable to eliminate it at this time from further consideration.

The Act to Regulate Commerce gives to this Commission, for the purposes therein set forth, jurisdiction over and applies to "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia."

The Clyde Steamship Company is a party to through tariffs fixing rates in connection with the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railway Company from points in Florida to New York and other points in other States. These are through shipments, "partly by railroad and partly by water," and the "arrangement" is for "a continuous carriage or shipment" upon an agreed division of the "through rates." See Record, Menzies, pp. 32, 32 1-2, 33; Capps, pp. 549, 550.)

This state of facts, we submit, brings the Clyde Steamship Company within the decision of the Supreme Court in Interstate Commerce Commission vs. C. N. O. & T. P. R. R., 162 U. S., 184 (Social Circle case), and the decision of this Commission in Railroad Commission of Florida vs. Savannah F. & W. R. Co., 5 I. C. C. Rep., 13, 25, and cases cited.

6 In the present case we claim that the Florida growers and shippers are entitled to relief as follows:

1. The shippers of citrus fruits, pineapples, and vegetables, via Jacksonville, Florida and Clyde Steamship Company to New York and other points are entitled to a reduction of ten (10) cents per box on the proportion of the through rate which is now allotted to the Clyde Steamship Company.

2. The shippers of citrus fruits, pineapples and vegetables from Florida loading points to eastern markets (that is markets to which the present carload rates from Florida do not apply) should have a carload rate put into effect based upon the present "any quantity rates" as the "less than carload rates" and the carload rates to be the same percentage less than such "less than carload rates" as the defendants have established between carload and less than carload rates to Ohio River points when destined to western markets; the min-

imum loading per car to be three hundred (300) boxes when cars can be properly loaded with that quantity.

3. The rate on citrus fruits from Florida points to Boston and points taking the Boston rate, via the New York, New Haven and Hartford Railroad from the Harlem River, should be reduced by an amount equal to the excess of the proportion received by the New York, New Haven and Hartford Railroad Company on rates from Florida points over the proportion received by said Company on rates from California points.

4. Rates on citrus fruits in carloads with a minimum of three hundred (300) boxes, where cars can be properly loaded with that quantity, from Florida loading and producing
7 points to New York should not exceed fifty (50) cents per box, and to points beyond New York should not exceed the New York rate plus five (5) cents per one hundred (100) pounds per one hundred (100) miles; carload rates to eastern market, when a less distance than New York, to be reduced in the same proportion as the New York rate.

5. Rates to eastern and western markets from Florida points on vegetables to be reduced to permit the Florida growers and shippers to meet competition from California on celery, and from Cuba Mississippi, and Louisiana on other vegetables; and in no case such rates to exceed the rates on same vegetables from Crystal Springs, Mississippi, and the rates should be established on the basis of carloads and less than carloads with a proper difference therein.

6. Rates on pineapples from Florida points should be reduced so as to permit the Florida growers and shippers to meet competition from Cuba.

7. Rates on strawberries per crate when shipped in carloads, from Starke and Lawtey, Florida, to eastern markets, should remain as now established on the minimum requirement of two hundred (200) crates or ten thousand (10,000) pounds to the car, but the minimum requirement for loading a car should not exceed one hundred and fifty (150) crates per car.

8. Refrigeration charges on fruits and vegetables from Florida points are unjust, unreasonable and exorbitant and should be reduced to a fair and reasonable charge to cover the service rendered.

It will be well to analyze to some extent the evidence as presented to the Commission in this case, and in doing
8 so the figures in brackets, hereinafter, are to be taken as referring to the pages of the record.

NECESSITY FOR RELIEF TO THE FLORIDA SHIPPERS AND GROWERS

1. Oranges and Citrus Fruits.

The competition in the eastern markets between citrus fruits from Florida and California is active, commencing in December and continuing until the 1st of April (125-6), and the California fruit is "pushing the Florida fruit to one side" (129-30); and, as said by Mr. Montgomery, a Florida grower, "we think that the competition is growing stronger all the time and it is harder for us to market fruit," and in the early markets the competition comes from the islands—Jamaica, Cuba, Porto Rico—(298), and later from California (339, See Chase, 207). Mr. Chase (209) testifies as to the competition as follows:

> "Q. What has been the effect on the Florida producer?
>
> A. We have had to take less and less money for our product. We have had to meet their price and our freight rates have been high. They have been able to undersell us and make more money on a lower freight rate.
>
> Q. What will be the outcome in your opinion if the present adjustment of rates continues, so far as Florida producers are concerned?
>
> A. The value of our property will decrease; there will be no extension of the industry, and it will be an unprofitable industry for all engaged in it, in my opinion."

and (262) the Florida orange grower cannot compete with the California grower upon the same rate in the same market. And Mr. J. M. York, who has been engaged in handling fruit in Boston for years, in answer to a question as to what will be the result, as far as Florida fruit —oranges—is concerned, if the present adjustment of rates continues, in regard to the business of Boston and the surrounding territory as compared with California Jamaica and Porto Rico, answered (134):

> "Well, I can see only one result—that they will eventually have to quit the business in that territory.
>
> Q. That is due, you say, to the adjustment of the rates?
>
> A. Yes."

Again, Mr. Thomas, a Florida grower, says (350) "Well, I just sum it up this way—that unless we get relief in the way of freights, it is a disaster to some citrus fruit-producing country. We cannot market our fruit, and I doubt very much

whether California can, either. We are growing too much of it. We can no more move it at the present rate than we can fly. It is utterly impossible. There is thousands of fruit on the trees in my country now that will never be shipped."

The freight rates from Arcadia, Florida, as compared with the rates from Los Angeles, California, to various points are as follows: (Complainant's Exhibit "Chase No. 1.")

EXHIBIT CHASE NO. 1.

10 Comparative statement showing freight rates on Citrus Fruits from Los Angeles, Calif., and Arcadia, Florida, to various points named below.

Table omitted.

The supplies of California fruit drive the Florida fruit out of the market at Chicago, and the same is practically true of Boston (204); and the Florida producer cannot make a profit on fruit at the present freight rates, (See evidence of Borland, p. 273, etc.) The volume of shipments of fruit from Florida have greatly increased since 1884 (275-225-6-295-956-7-8-
11 9-60).

The fruit cannot be moved from Florida on the present freight rates (982); there has been no material change in the rates on oranges from Florida notwithstanding the increased volume of business (141-276-330); and those attempting to market the Florida fruit are hampered a great deal on account of rates (126-8-9). The rate from Los Angeles, California, to New York had been, until January, 1907, $1.25 per 100 lbs. on oranges and citrus fruit, and this rate was fixed by competition between Florida and California (Menzies, 53-6-7). As was said by Mr. Edward Chambers, Assistant Freight Traffic Manager of the Atchison, Topeka and Santa Fe Railroad (383) "I will say that when that rate was first fixed at $1.25 it WAS BASED ON THE COMPETITION THAT THE CALIFORNIA PRODUCER HAD WITH THE FOREIGN ORANGES ON THE ATLANTIC COAST AND WITH FLORIDA. Florida was a pretty large producer at that time." Thus the rate of $1.25 was fixed from California to enable its oranges to go in the eastern markets in competition with the foreign oranges and the Florida oranges (384); and what the Florida producer complains of is the adjustment of the rates as between California and Florida (296-7). After the rate from California had been fixed at $1.25, which was said to be a fair rate (369) for the purpose of increasing the consumption of oranges and helping out the grower (384) the railroads serving the California

fruit producer, about January, 1907, reduced the rate to $1.15 per 100 pounds; and this rate of $1.15 covers shipments from California anywhere in the United States or Canada, east of Denver, and the reasons for the reduction of the rate from $1.25 to $1.15 is set forth by Mr. Edward Chambers (384) and Mr. G. W. Luce (402); and exactly the same reasons for reducing the California rate were urged as we now insist

12 justifies the relief needed by the Florida producers to broaden the market and increase the consumption.

The rate from California of $1.15 per 100 pounds, as above set forth, is what is known as a "Postage Stamp" rate, covering the entire United States north of the Ohio River, and Canada, and coupled with this rate is what is known as the unlimited power of diverting cars (200); and this postage stamp rate is a great advantage (49-952-131). The effect of this postage stamp rate is thus explained by Mr. J. C. Chase (199-200): "It enables the California shipper or the California grower to lay his product in every market in the country, except a few in the South, at a uniform price, for every man, woman and child. That is, they can ship their oranges at a uniform price to all points in the United States, which is a very decided advantage over Florida. As the car moves, the rate or the price of the fruit—naturally the price—would increase also—increase as you get away from the Ohio River, so that after the season opens up from California we are cut out of the largest and most valuable territory in which we have to market, owing to this blanket rate from California which makes a uniform rate—a uniform price. That is, if you make a price in California of $1.08 a box and add the freight to it, it is $2.23 (stenographer's transcript corrected) all over the United States, and that establishes the price on oranges. When the Florida man comes along he could not go into these markets and get to exceed $2.23, and after he gets beyond the Ohio River he would have to meet that price or stay out. So we have to stay out." The Florida oranges cannot be moved on the rates now in force. (See evidence of Rawlerson, 986-7; Berry, 989, &c.; Skinner, 1000-12.)

The present rates upon citrus fruits and vegetables

13 are higher than the actual rates have been, for up to 1904 rebates were given to the shippers ranging from 8 to 10 cents a box on citrus fruits (226-7-275).

So, the conclusion we draw from the evidence is that the volume of citrus fruit has increased; that the apparent rates have remained substantially the same from Florida, although the real rates are higher; that the rate between California and Florida was fixed at $1.25 by competition; that the rate from

California has been reduced within the last eighteen (18) months to $1.15 per 100 pounds; that the Florida fruit crop cannot be moved under the present rate; that in order to take care of the increasing production it is necessary to broaden the market, and this cannot be done upon the present freight rates; and that a large proportion of the Florida fruits will never reach the market upon the present freight charges; that it is absolutely necessary to the prosperity and development of the citrus fruit industry in Florida that there should be concession made upon the present freight rates.

2. VEGETABLES FROM FLORIDA.

Practically the same condition as with citrus fruits exists as to vegetables from Florida, except that the competition is principally from Mississippi, Louisiana and Cuba, and from California on celery. The following complainant's exhibits (Chase Number 2 and Chase Number 3), show a comparative statement of rates on vegetables from Crystal Spring, Mississippi, and Palmetto Florida, and rates on tomatoes from Havana, Cuba, via Mobile, and from Homestead, Florida, to various points named:

EXHIBIT CHASE NO. 2.

14 Rates on vegetables (Tomatoes and Lettuce), from Crystal Springs, Miss., and Palmetto, Fla., to various points named below:

Table omitted.

EXHIBIT CHASE NO. 3.

15 Rates on Tomatoes, from Havana, Cuba, via Mobile, Ala., and from Homestead, Fla., All Rail, to various points named below.

Table omitted.

As to points from which competition comes to Florida growers of vegetables, see evidence of Chase (210); see as to competition, evidence of York (135, et seq.); the rates on tomatoes from Crystal Spring, Mississippi, crowd the Floridas out of the market (136); and on the present rates upon celery Florida cannot compete with California (559), and it will be seen from the evidence that, upon the present adjustment of rates, whenever California celery goes into the markets in competition with the product from Florida, or Mississippi vegetables in competition with like products from Florida, or tomatoes from Cuba or Mississippi, with tomatoes from Florida, that the

Florida product is compelled to get out of the market; and this is due to the freight rates charged upon the Florida
16 product in comparison with rates on like products from competitive points. (See evidence of McLean, 1016; Davis, 1018.)

3. CARLOAD RATES.

There is no carload rate on fruit or vegetables from Florida to the eastern markets (198-224), except upon cantaloupes (221) and cabbage, potatoes and watermelons; shipments of oranges to the eastern markets are in carload quantities altogether (224), but they pay what is known as "any quantity" rate. The shipper from Florida pays the cost of loading and the consignee the unloading, as a rule, although they get no benefit in a carload rate (224), by reason of paying this expense. There is a carload rate on fruit from California of $1.15 per 100 pounds or 82 cents and a fraction per box; that covers all the United States and Canada, as far north as Prince Edward's Island or New Brunswick (198). As to the necessity for carload rate see evidence of Mr. L. B. Skinner, a Florida grower (1002-1003-9). The Florida producer and shipper has a carload rate which is less than the "any quantity" rate or less than the "less than carload rate" to the Ohio River and western points; and on oranges the carload rate from Jacksonville to the Ohio River is 40 cents per crate, and the less than carload rate is 70 cents per crate (Menzies, 25). In other words, the carload rate to Ohio River points is about 34 per cent. less than the "any quantity" or "less than carload rate." There is no carload rate to eastern or western markets on pineapples, although they are shipped altogether in carloads, and such a rate would be of great advantage to the growers (929-30-3); and according to Mr. Peebles, of the Pennsylvania Railroad Company, considerable trouble and expense would,
17 to a certain extent, be avoided if there were carload rates to the eastern cities in effect from Florida (442); if the carload rate to some western city were established as a group rate, as is done from California, or a postage stamp rate, as it is called, it would be of great advantage to the Florida shipper (963-4).

The Florida oranges weigh 80 pounds to the box, and the California oranges weigh 72 pounds to the box (214).

4. PINEAPPLES.

The active competition as against the Florida pineapple is from Havana, Cuba, (215), and this competition has been increasing in the last few years (322), and the Cuban pineapple is grown much cheaper than the Florida product (322).

The Cuban pineapple comes into the United States by way of New York, Mobile, and New Orleans, and the rate from Havana to Cincinnati, including lighterage to the vessel at Havana, is 53 cents per crate, the duty is 14 cents per crate, making 67 cents from Havana to Cincinnati, and it costs from 3 cents to 5 cents to get the pineapples to the harbor at Havana (938-9-40). The rate from Boynton, Florida, to Cincinnati is 76 cents, and this condition of competition, applicable to Cincinnati, applies to other places in the United States (942). See especially on this subject evidence of J. Leveron (937, et seq). The competition from Cuba knocks off 50 cents per crate from the price of the Florida pineapple. We here present the following comparative statement of rates on pineapples from Havana, Cuba, via Mobile, Alabama, and from Boynton, Florida, all rail, to various points named, being complainant's Exhibit "Chase 4." The rates from Havana via New York and New Orleans are the same as via Mobile.

EXHIBIT CHASE NO. 4.

18 Rates on Pineapples, from Havana, Cuba, via Mobile, Ala., and from Boynton, Fla., All Rail, to various points named below.

Table omitted.

The competition in the Boston market is very close between Florida and Cuban pineapples (149). The competition with Cuba makes it difficult to market the Florida product (928-9), and a carload rate would be useful, 80 per cent. of the products from Florida now being shipped in carloads (929-30-3). The markets for the Florida pineapples are all over the country, although more are shipped to the eastern cities than are shipped west (314); and the cost of producing a crate of pineapples in Cuba, upon which the duty is 14 cents, would be about 20 cents, as against 60 cents or 65 cents in Florida; or in other words, it costs the Florida producer 65 cents a box as against 20 cents (316). The Florida producer can-
19 not compete in New York with the Cuban pineapples; and a large producer, Mr. McMullin, testifies that he has not been able to compete in the New York market for six years (318). There are through rates in effect from Cuba to interior points like Buffalo and Cleveland, which rates are made through New York or Mobile, and the Florida producer is unable to meet the competition from Cuba in the western markets (320-1). Fertilizer has to be used in Florida, but not in Cuba, which adds to the expense (257).

5. STRAWBERRIES.

On shipments of strawberries from the principal producing points in Florida—Starke and Lawtey—to the points hereafter named, the rates are as follows:

(Complainant's Exhibit "Truby Exhibit No. 1.")

EXHIBIT TRUBY NO. 1.

20 Rates on strawberries from Starke and Lawtey, Florida, to the following points:

CITIES	Miles	Per 200 Crate Mim. or 10,000 lbs.					
		Frt. per crate of 50 lbs.	Frt. per 100 lbs.	Refrgeration per crate	Refrigeration per 100 lbs.	Frt. and Refrigeration per crate of 50 lbs	Frt. and Refrigeration per 100 lbs. per 100 miles
New York City...	1115	1.07 1-2	2.15	.72 1-2	1.45	1.80	32.29
Philadelphia	1025	1.07 1-2	2.15	.72 1-2	1.45	1.80	35.12
Boston	1347	1. 32 1-2	2. 65	. 79 1-2	1. 59	2. 12	31. 50
Cincinnati	933	1.30	2.60	.50	1.00	1.80	38.58
		Per 100 Crate Mim. or 5000 lbs.					
New York City ..	1115	2.06	4.12	.50	1.00	2.56	22.96
Philadelphia	1025	2.06	4.12	.50	1.00	2.56	24.97
Boston	1347	2. 15	4. 30	. 55	1. 10	2. 70	20. 40
Cincinnati	933	1. 83 1-2	3. 67	.72 1-2	1. 45	2. 56	27. 43

Above rates shown on S. A. L. Tariff I. C. C. No. 33/02.

And the rates on strawberries from Hammond and Amite City, Louisiana, to the points named are as follows:

(See Complainant's Exhibit "Truby Exhibit No. 2.")

EXHIBIT TRUBY NO. 2.

21 Rates on Strawberries from Hammond and Amite City, La., to the following points:

CITIES	Miles	Per Car 18,000 lbs. Mim. Frt. per 100 lbs.	Refrigeration per car	Frt. and Refrigeration per 100 lbs.	Frt. and Refrigeration per 100 lbs. per 100 miles.
Cincinnati	865	.61 1-2	27.00	.76 1-2	15.91
Chicago	869	.61	27.00	.76	15.74
St. Paul	1283	.95	27.00	1.10	15.43
Omaha	1297	.86 1-2	27.00	1.01 1-2	14.09

Above frt. rates are shown in Ill. Cent. Tariff No. E-1076 I. C. C. No. 1627.

Above refrigeration rates are shown in Supplement No. 59 to I. C. C. No. 1627.

And the rates on strawberries from Castlebury, Alabama, to the points named are as follows:

(Complainant's Exhibit "Truby Exhibit No. 3.")

EXHIBIT TRUBY NO. 3.

22 Rates on strawberries from Castleberry, Ala., to the following points:

CITIES	Miles	Per Car 10,000 lbs. Mim. Frt. per 100 lbs	Refrigeration per car	Frt. and Refrigeration per 100 lbs.	Frt. and Refrigeration per 100 lbs. per 100 miles.
Cincinnati	695	.85	42.00	1.27	18.27
Chicago	979	1.05	50.50	1.55-1-2	15.88

Above refrigeration rates are shown in L. & N. O. No. 828 I. C. C. No. A-7416.

Above refrigeration rates are shown in L. & N. Tariff G. F. O. No. 977 I. C. C. A. A-9146.

From Starke and Lawtey, in Florida, there are two rates in effect; one upon a minimum car of 200 crates, or 10,000 lbs., and the other upon a minimum of 100 crates or 5,000 pounds to the car. Strawberries cannot be shipped from Florida to the eastern markets where the principal shipments go, so as to reach the market in good condition, in cars loaded with 200 crates (113); there are no carload rates in effect (302).

The refrigeration of a car is insufficient to take 200 crates of strawberries to the car (143-4); 150 crates ought to be the maximum requirements for a car (145; see also 140 to 150). The shipper of strawberries from Florida cannot afford to pay the rate based upon a minimum of 100 crates to the car (304-5), but they can, on a minimum of 125 or 140 crates to a car,

23 afford to pay the rates now established on the basis of 200 crates minimum (308). Shipments are almost entirely to eastern cities (308), but when cars are loaded with 200 crates to the car the whole upper tier and the strawberries near the doors of the cars are lost (312); there are no cars loaded, as a matter of fact, with 200 crates to the car, but the loading is over 100 crates and is paid for on the basis of the charge where the minimum of 100 crates is loaded. On account of the present rate from Florida bushels and bushels of strawberries are grown in Florida which never reach the market, and which could upon a more reasonable adjustment of rates (307).

6. REFRIGERATION CHARGES FROM FLORIDA.

We here present (Complainant's Exhibit "Chase No. 5") a comparative statement showing refrigeration charges on citrus fruits and vegetables from Los Angeles, California, and from Arcadia, Florida, to points named:

EXHIBIT CHASE NO. 5.

Comparative statement showing Refrigeration charges on Citrus Fruits and Vegetables, from Los Angeles, Cal., and from Arcadia, Fla.:

Table omitted:

We present also (Complainant's Exhibit Chase No.
24 6) comparative statement showing freight and refrigeration charge on celery and other vegetables from Los Angeles, California, and from Sanford, Florida, to points named:

EXHIBIT CHASE NO. 6.

Comparative statement showing Freight and Refrigeration charges combined on Celery and other vegetables, from Los Angeles, Cal., and from Sanford, Fla.

Table omitted.

It requires from twelve to fourteen days to move a car under refrigeration from California to New York, and from four to six days to move a car under refrigeration from Sanford, Florida, to New York (352-3). The distance from Los Angeles to New York is 3249 miles, and the distance from Arcadia, Florida, to New York is 1278 miles. The charges for refrigeration on a carload of oranges of 24,000 pounds from Arcadia,. Florida, to New York, is $75, and the charge for refrigeration on a car of oranges of 24,192 pounds from
25 Los Angeles, California, to New York, is $65.61. The charge for refrigeration of a car of vegetables of 20,000 pounds from Arcadia, Florida, to New York is $80, and the charge for refrigeration on a car of vegetables from Los Angeles, California, of 24,000 pounds, to New York, is $67.50. THE ICING CHARGES ON A CAR OF CANTALOUPES OF 24,000 POUNDS FROM GAINESVILLE OR JACKSONVILLE, FLORIDA, TO NEW YORK, IS $48; the refrigeration charges on a car of oranges of 24,000 pounds from Arcadia, Florida, to New York, is $75; on a car of vegetables of 20,000 pounds, $80; on a car of vegetables of 24,000 pounds, $90. These comparative statements of refrigeration charges as between California and Florida on cantaloupes, pineapples, vegetables and oranges show that the rates of refrigeration upon vegetables, oranges and pineapples from Florida are unreasonable and extortionate.

7. RATE CHARGED BY CLYDE STEAMSHIP COMPANY FROM JACKSONVILLE TO NEW YORK.

The Seaboard Air Line and the Atlantic Coast Line Railroads bring oranges to Jacksonville and Savannah, and these oranges go either to New York by way of Clyde Steamship Co. from Jacksonville, or by another steamship line from Sa-

vannah. The rate of the Clyde Steamship Co. from Jacksonville to New York is 35 cents per crate, and out of that rate of 35 cents the Clyde Steamship Company pays to the railroads 10 cents per crate in consideration of their not carrying the oranges to Savannah, but delivering the same to the Clyde Steamship Company at Jacksonville; so that the Clyde Steamship Company really receives for the service 25 cents per crate. And therefore the complainant charges that the rate of the Clyde Steamship Company should be 25 cents per crate on citrus fruits and vegetables from Jacksonville to New
26 York, instead of 35 cents (see evidence of Menzies, of Atlantic Coast Line, pp. 32-32½-33; Capps, of Seaboard Air Line, pp. 549-50). This payment is made to the railroad companies for no service rendered, but for NOT carrying the traffic from Jacksonville to Savannah (34).

The defendants in this case have orered a mass of evidence in the way of exhibits made up in their accounting departments. It is impossible for us to intelligently and profitably analyze the same without knowing the particular purpose for which these statements were presented. If they are offered to show that the carriers cannot profitably conduct their business without maintaining the present rates and the adjustment thereof on fruit and vegetables, then we say, as was said by the Supreme Court of the United States in the case of Smyth vs. Ames, 169 U. S., 544: "It cannot be admitted that a railroad corporation maintaining a highway under the authority of the State may fix its rates with a view solely to its own interests, and ignore the rights of the public." Or, as was said by the same Court in the case of Covington. &c., Road Co. vs. Sandford, 164 U. S., 596-7: "The public cannot properly be subjected to unreasonable rates in order simply that the stockholders may earn dividends. * * * If a corporation cannot maintain such a highway and earn dividends for stockholders, it is a misfortune for it and one which the Constitution does not require to be remedied by imposing unjust burdens upon the public."

The question in this case is whether the rates and the adjustment thereon now in effect on Florida fruits and vegetables are reasonable and just, and whether such rates discriminate against Florida producers and shippers. These are the only questions in the case, and we have been able
27 to derive little or no help in arriving at a proper conclusion from the mass of tabulated exhibits introduced by the defendants.

It must be clear in this case that, in order to broaden the market and enable the producer of fruit and vegetables in Flor-

ida to ship the product of his industry, there must be some change in the rates now in effect. There has been an enormous increase in the volume of this traffic in the last few years, and yet when we take into consideration that up to the year 1904, at least, rebates were the rule on this traffic, instead of the rates decreasing as the volume of business increased, rates have increased along with the volume of business.

Again, while we do not contend that there should be the same rate per ton per mile on fruit and vegetables from Florida as from California, still we do insist that when the California carrier can profitably move traffic at a rate of about seven mills per ton per mile across the continent, the defendants should be able profitably to move like traffic from Florida to the Potomac River at less than 19 mills per ton per mile. It is to be borne in mind that the California carrier crosses the continent with the grades upon the Rocky Mountains, and with the grades on the Allegheny Mountains, whereas the carrier from Florida conducts its business upon a low grade road, inexpensive to maintain and under much more favorable circumstances than the carrier from California.

Further, the rates should be adjusted so that, if possible, all producers should meet in the market upon a fair basis, but from the evidence in this case it is shown that the rates as between California and Florida were established by competition between those localities, and even when upon a basis which gave to the California producer the entire west-
28 ern market, when competition existed, and put the Florida producer at a disadvantage by reason of what is known as the carload postage stamp rate with unlimited privilege of diverting the car, even as far as eastern markets are concerned; and then about the first of January, 1907, California rates were reduced 10 cents per one hundred pounds, but the carriers from Florida made no effort to protect their shippers after this reduction, but, as the evidence in this case shows, left the markets practically in the possession of California producers. It is claimed that this reduction of 10 cents in the California rate, made effective about the first of January, 1907, was an emergency measure on account of the enormous production of oranges in California in that season; and yet, by the evidence it is shown that California produced and shipped more oranges in the season of 1904-5 than it did in the season of 1906-7. The shipments were as follows:

Season.		
1904-5	25608	carloads
1905-6	22167	carloads
1906-7	22965	carloads

The real purpose of the reduction of the California rate is shown by the evidence of Mr. Edward Chambers, of the Atchison, Topeka and Santa Fe R. R. Co., under cross-examination (370) as follows:

> "Well, the growers found a condition in the eastern markets where they claimed that a reduction in the rate would increase the consumption. They argued that as the crop was increasing every year, it was necessary to extend the markets or increase the consumption in the large consuming centers. They showed, and I think convinced, the California railroad officials, that any reduction that was made in the rate would go to the grower, and it
> 29 was on the basis that the reduction of ten cents per hundred pounds would go to the grower, would increase the net price to the grower, that the reduction was made."

And Mr. G. W. Luce, of the Southern Pacific Railroad, says (402) that the California rate was reduced to $1.15 "to meet a condition that the growers felt they would have to meet and wanted us to share the burden; that is, they thought they would not be able to freely market their oranges and would meet a loss, the same as they had done in previous years."

It is urged by the defendants that the cost of service in moving perishable freight is very great, and a representative of the Pennsylvania Railroad Company testified to the exceptional service rendered, especially by 57 trains which were operated from the Potomac River yards to New York; but it will be noted that the bulk of the shipment of Florida oranges is over by the first of April, and that these 57 fast trains are only run after the first of April (430-4-5), and that it is the exception when oranges are moved under high rate of speed (427). Further, that the shipment of Florida celery begins about the middle of February (559), about two months before these fast trains of the Pennsylvania Railroad are operated.

By referring to the case of Railroad Commission of Florida vs. Savannah, Florida & Western Railroad Company, supra, we find that the rates on oranges per box from Jacksonville, Florida, all rail, were as follows:

To Baltimore	Philadelphia	New York	Boston	taking effect
40	40	40	40	Dec. 6, 1887
40	41	43	49	Oct. 1, 1888
40	41	43	49	Sep. 21, 1889
50	51	53	59	Nov. 23, 1890

30 Up to 1890 the volume of the orange crop from Florida was as follows:

1886-7	1,260,000 boxes
1887-8	1,500,000 boxes
1888-9	1,950,000 boxes
1889-90	2,150,000 boxes

The present season the shipments from Florida will amount to 3,000,000 boxes of oranges, and would have been 4,500,000 but for a drought (Chase, 957; Skinner, 999); and the present prospect for the coming year is that the producers of oranges in Florida will have to find a market for six million boxes (Chase, 957; Skinner, 999).

After the advance in rates, effective November 23, 1890, on Florida oranges, complaint was filed before this Commission, and after hearing the railroads were required to reduce their rates and the rate from Jacksonville to New York and other cities on a like basis, since that reduction, has been practically 50½ cents per box, notwithstanding the fact that the volume of business has enormously increased.

Attention is here called to the fact that the railroads serving the producers of fruit in Florida give to the shippers a carload rate to the Ohio River and western markets, and the rates are better into that territory than into the markets on the Atlantic seaboard, and this notwithstanding the fact that there is water transportation between Jacksonville and the Atlantic seaboard markets.

From the above review of the facts in this case, complainant insists that the producers and shippers of oranges and vegetables from Florida are entitled to the relief prayed for in this proceeding, as follows:

I.

31 THE SHIPPERS OF CITRUS FRUITS, PINEAPPLES AND VEGETABLES VIA JACKSONVILLE, FLORIDA, AND CLYDE STEAMSHIP COMPANY TO NEW YORK AND OTHER POINTS, ARE ENTITLED TO A REDUCTION OF TEN (10) CENTS PER BOX ON THE PROPORTION OF THE THROUGH RATE WHICH IS NOW ALLOTTED TO THE CLYDE STEAMSHIP COMPANY.

The statement of this proposition after calling attention to the evidence in this case seems to be all that is necessary to

justify a reduction of ten (10) cents per box of oranges on the rate of the Clyde Steamship Company from Jacksonville, Florida, to New York. While the apparent rate of the Clyde Steamship Company is 35 cents per box from Jacksonville to New York, that Company gives to the Atlantic Coast Line Railroad Co. and the Seaboard Air Line Railroad Co. 10 cents per box out of this amount, in consideration of the railroad companies NOT CARRYING THE ORANGES TO SAVANNAH, but delivering the same to the Clyde Steamship Company at Jacksonville; so that the real rate paid to the Clyde Steamship Company for the services rendered is 25 cents per box, and the remaining 10 cents which the shipper pays is turned over to the railroad companies for no service whatever, and if oranges can be carried for 25 cents per box, why cannot vegetables? When it is taken into consideration that the Government has spent hundreds of thousands of dollars to enable the steamship lines to get into Jacksonville, Florida, at least the shippers over those lines should get the benefit of the lowest transportation charge which can be made; and when the Clyde Steamship Company charges 35 cents per box of oranges to New York, and gives 10 cents out of that to the railroad companies for no service whatever, it seems apparent
32 that the rate from Jacksonville to New York should be 25 cents per box, on oranges and vegetables.

II.

THE SHIPPERS OF CITRUS FRUITS, PINEAPPLES AND VEGETABLES FROM FLORIDA LOADING POINTS TO EASTERN MARKETS (THAT IS MARKETS TO WHICH THE PRESENT CARLOAD RATES FROM FLORIDA DO NOT APPLY) SHOULD HAVE A CARLOAD RATE PUT INTO EFFECT BASED UPON THE PRESENT "ANY QUANTITY" RATES AS THE "LESS THAN CARLOAD" RATES AND THE CARLOAD RATES TO BE THE SAME PERCENTAGE LESS THAN SUCH "LESS THAN CARLOAD" RATES AS THE DEFENDANTS HAVE ESTABLISHED BETWEEN CARLOAD AND LESS THAN CARLOAD RATES TO OHIO RIVER POINTS WHEN DESTINED TO WESTERN MARKETS: THE MINIMUM LOADING PER CAR TO BE THREE HUNDRED (300) BOXES WHEN CARS CAN PROPERLY BE LOADED WITH THAT QUANTITY.

It is urged on behalf of the Florida producer and shipper of fruit and vegetables that every reason which justifies a carload rate on the movement of traffic would require that there should

be such a rate in effect from Florida to the eastern markets on fruit and vegetables. At present there is but one rate in effect on citrus fruits and vegetables from Florida to the eastern cities, called "any quantity" or "package" rate, under which one box of oranges or vegetables can be shipped at the same rate per package or crate covering a carload of oranges and vegetables and notwithstanding the fact that the shipper of carloads of vegetables and fruit bears the expense of loading and unloading the car and saves this expense to the railroad company, no concession in the rate is made by reason thereof.

33 The situation, however, with regard to shipments to Ohio River points when destined to western markets, is different. When shipments are made from Florida to the western markets there is a "carload rate" and an "any quantity" or "package" rate. For instance, by referring to the evidence of Mr. Jas. Menzies, General Freight Agent of the Atlantic Coast Line Railroad Company (25), it will be found that the carload rate on oranges from Jacksonville to the Ohio River is 46 cents per crate, and the less than carload rate is 70 cents per crate; or in other words, the carload rate is about 34 per cent. less that the "any quantity" or "package" rate to the Ohio river and the West, and these two rates apply on shipments west of and including Pittsburgh. The present "any quantity" or "package" rate from Arcadia, Florida, to New York is 75.2 cents per box and if a carload rate was established, as it should be, 34 per cent. less than the "any quantity" rate, we would have a carload rate from Arcadia to New York of 50.6 cents per box; whereas the complainants in this case urge that it is necessary in order to market the citrus fruits of Florida, that there should be a maximum rate of 50 cents per box on oranges FROM POINTS OF LOADING AND PRODUCTION IN FLORIDA TO NEW YORK (218-68-960). If this Commission should establish a rate of 50 cents per box from Florida points of loading and production to the eastern markets, then would be brought about practically the same condition which the railroad companies have voluntarily established on shipments of oranges from Florida to the western markets, and this would be at the rate of about one cent per ton per mile, as against a charge of between seven (7) and eight (8) mills per ton per mile on like carriage from California to the eastern markets.

34 On page 1039 of the Record, Mr. Commissioner Prouty submitted to counsel for complainant the following question: "Suppose the commission were of the opinion that on the whole these rates to eastern destinations ought not to be reduced, would you, in that case, prefer to have a

carload rate put in less than the present western carload rate, and the less than carload rate somewhat advanced, carrying out the idea suggested by Mr. Abrams, or would you prefer to have it left as it is to-day, an 'any quantity' rate?"

It is assumed that the transcript of the record is incorrect, and that the Commissioner intended to say, "Would you, in that case, prefer to have a carload rate put in lower than the present 'any quantity' rate, and a less than carload rate somewhat advanced?"

To this question we would say that if the Commission were of opinion that the present "any quantity" rate should be somewhat advanced, although it was voluntarily established by the railroads, then the producers and shippers from Florida would be in a much fairer situation to meet competition if a carload rate were established less than the present "any quantity" rate, even if the present "any quantity" rate should be somewhat advanced. In other words, the producers and shippers of fruits and vegetables from Florida find it necessary that there should be established a carload rate to the eastern markets less than the present "any quantity" rate, and this carload rate should be established so as to give the shippers a rate by the carload of from 25 cents to 30 cents per box less than the present "any quantity" rate, even if it should be found necessary to advance the present "any quantity" rate. The carriers from this very territory have voluntarily established a difference of 34 per cent. between carload and less than carload rates to the Ohio River and western markets, and this difference between the two rates should be taken as the guide in establishing like rates to the eastern markets.

III.

35 THE RATES ON CITRUS FRUITS FROM FLORIDA TO BOSTON AND POINTS TAKING THE BOSTON RATE, VIA THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD FROM THE HARLEM RIVER, SHOULD BE REDUCED BY AN AMOUNT EQUAL TO THE EXCESS OF THE PROPORTION RECEIVED BY THE NEW YORK, NEW HAVEN & HARTFORD R. R. CO. ON RATES FROM FLORIDA POINTS OVER THE PROPORTION RECEIVED BY SAID COMPANY ON RATES FROM CALIFORNIA POINTS.

On a shipment of oranges from Arcadia, Florida, to Boston, the New York, New Haven & Hartford Railroad Company's charges for the movement from New York to Boston is 12 7-8 cents per 100 pounds (100), and on a shipment of oranges

from California to Boston, the New York, New Haven & Hartford Railroad Company charges for the transportation from New York to Boston 7.6 cents per 100 pounds; and this difference in charge is justified by the New York, New Haven & Hartford R. R. Co. on the ground that its charge on each shipment is pro-rated on the mileage from the point of origin to Boston, and that naturally it would get less on the California shipment by reason of the total mileage being greater.

It is difficult for us to see why if the New York, New Haven & Hartford Railroad Company can profitably carry oranges from New York to Boston when shipped from California at 7.6 cents per 100 pounds over its entire line from New York to Boston, it could not likewise carry profitably oranges over its entire line from New York to Boston at 7.6 cents per 100 pounds when those oranges are shipped from Florida. It cannot be said that this difference is necessary in order to enable the California orange to get into the Boston market, for the
36 rate from Los Angeles, California, to Boston, as now established, is 82.8 cents per box, whereas the rate from Arcadia, Florida, to Boston is 84 cents per box; and the rate from Los Angeles, California, to Boston is .0350 per cwt. per 100 miles, whereas the rate from Arcadia, Florida, to Boston is .0694 per cwt. per 100 miles. The rate to Boston from Florida points is made, as Mr. Kentfield, of the New York, New Haven & Hartford Railroad, frankly admits, on the basis of how much the traffic will bear (113.)

In case the Commission should not deem it proper to order that a carload rate be established from Florida on fruits and vegetables as above suggested, then it is urged that Florida should be established as a group territory and a rate of 50 cents per box should be established from such territory to New York and a like proportion to distances beyond.

IV.

RATES ON CITRUS FRUITS IN CARLOADS WITH A MINIMUM OF THREE HUNDRED (300) BOXES, WHERE CARS CAN BE PROPERLY LOADED WITH THAT QUANTITY, FROM FLORIDA LOADING POINTS TO NEW YORK, SHOULD NOT EXCEED FIFTY (50) CENTS PER BOX, AND TO POINTS BEYOND NEW YORK SHOULD NOT EXCEED THE NEW YORK RATE PLUS FIVE (5) CENTS PER ONE HUNDRED (100) POUNDS PER ONE HUNDRED (100) MILES; CARLOAD RATES TO EASTERN MARKETS A LESS DISTANCE THAN NEW YORK TO BE REDUCED IN THE SAME PROPORTION AS THE NEW YORK RATE.

Mr. J. C. Chase, who is a shipper of large experience in Florida, says (218) that in order to get into the markets on an equal basis with other competitive points it is necessary that there should be a flat rate on oranges of 50 cents per box from Florida loading points to New York, this rate to cover points in Florida as a group territory (268); and Mr. J. M. York, a dealer in fruits in Boston, who has also had wide experience, says that if a rate of 50 cents per box on oranges from Florida, or at most 60 cents all rail, could be secured, the fruit business could be largely increased and the market extended; and on page 960 of the record, Mr. J. C. Chase says, in reply to questions of Mr. Commissioner Prouty, that in order to market the increasing volume of Florida oranges there would have to be a reduction of 25 to 30 cents a box on the freight rate in order to be of material assistance, although a reduction of 10 to 15 cents would help the Florida producer.

37

It must be apparent from the record in this case that it is necessary that something shall be done in the way of aid to the producer of Florida oranges if a market is to be found for the increasing amount of oranges grown; and when we come to the evidence as to what that reduction should be, the only evidence on the subject is that it should be 25 cents to 30 cents per box. This of course is leaving out the defence made by the carriers which has not been clearly defined, although as has been said, a mass of tabulations as to rates, cost of operation, &c., has been submitted in this case, by witnesses who are not sufficiently familiar with the same to explain how they were made up or whether the conclusions arrived at were correct. Therefore, we say that the undisputed evidence is that the rate on oranges should not be greater than 50 cents per box from Florida loading points to New York, in order to give to the Florida producer a fair profit upon his business, and the only question that remains is whether in the opinion of the Commission, fairness to the carriers will permit such a reduction.

38

We have taken the position also that this rate of 50 cents per box to New York should be increased to points beyond, not to exceed 5 cents per 100 pounds per 100 miles; and this of course we mean to apply to only such points as cannot carry for less; whereas it is shown that the New York, New Haven & Hartford Railroad Company can profitably carry oranges from New York to Boston at 7.6 cents per 100 pounds, a distance of about 285 miles.

As heretofore shown, the high speed service furnished by the Pennsylvania Railroad Company from Potomac Yards to

Jersey City, does not commence until after the first of April, at which time the bulk of the orange movement is over; and as said by Mr. Peebles, of the Pennsylvania Railroad Company (427), it is the exception when oranges move at high rate of speed, and that (433) the majority of oranges on the Pennsylvania Railroad move by the 17 hour train.

In the case of Railroad Commission of Florida vs. Savannah, F. & W. R. Co., 5 I. C. C. Rep., 13, at page 40, it is said:

> "Moreover, it does not appear that the rapid service and special agencies in the carriage of oranges are necessarily required by the nature of the commodity. While spoken of as 'perishable' in the testimony of the carriers, it is evident that this characterization is correct only to a limited extent. As is well known, oranges in considerable quantities are shipped by rail across the continent, and brought here also in numerous cargoes by slow vessels from the Mediterranean and other countries. It is an exceptionally hardy fruit, and well adapted to long transportation. The shipment is made in packages of convenient size for safe and rapid handling, while in
> 39 weight, as compared with bulk, it furnishes a relatively high tonnage for the space occupied. In general desirability as freight it differs widely from those more delicate and short-lived products which must be speedily consumed after they are gathered and which, from their inherent qualities, are ordinarily rendered valueless by accident or delay in transit. Therefore, the special facilities provided by the defendants for the transportation of perishable freight can hardly be claimed, so far as the orange traffic is concerned, to have been added in their general equipment solely because that traffic of necessity demanded high-speed trains and unusual convenience of delivery. The more probable reason is found in the competition between the different lines and their desire to secure a business so important in volume and so desirable in character. The orange trade from Florida, doubling as it appears to have done in the four years preceding the advance in rates, and giving indications of much greater development in the future, naturally attracted the attention of the carriers and prompted rivalry in the inducements offered to shippers. While these special facilities were a manifest advantage to the producer, the extra expenses which they occasioned were voluntarily assumed in competing for the business, and though entitled to a fair consideration, cannot be accorded a controlling relation to the rate in question."

It is established beyond controversy in this case that the carriers of oranges from Florida charge for the service more than double the average charge per ton per mile received by such carriers on all traffic; and this notwithstanding the fact that oranges move nearly altogether under ventilation, are not highly perishable, and are a very desirable character of traffic.

40 The railway companies from Los Angeles, California, carry oranges to Boston at 3.5 cents per 100 pounds per 100 miles, and from Arcadia, Florida, to Boston at 6.94 cents per 100 pounds per 100 miles; and while we do not claim that the rate per 100 pounds per 100 miles from Florida should be as low as it is from California, still, when the result is that a box of oranges is carried from Los Angeles, California, to Boston for 82.8 cents per box, and from Arcadia, Florida, to Boston at 84 cents per box, and the distance from Los Angeles to Boston is 3,298 miles, while from Arcadia to Boston it is 1,513 miles—we do say that these facts should be taken into consideration and given great weight in showing that the rates from Florida are unreasonable. Florida shippers are entitled in the markets of the East at least to the advantages which their location ought to give them. This Commission has said, in the case of Eau Claire B. of T. vs. Chicago, M. & St. P. Rwy. Co., 5 I. C. C. Rep., 264, at page 293:

> "That rates should be fixed in inverse proportion to the natural advantages of competing towns with a view of equalizing 'commercial conditions,' as they are sometimes described, is a proposition unsupported by law and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and any exaction of charges unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute."

We therefore submit that it is shown in this case that the rates from Florida points to the eastern cities are unreasonable, and the only evidence in the case as to what the rates should be is that it should not exceed 50 cents per box from

41 loading point to New York, and to points beyond New York a rate of 5 cents per hundred pounds per 100 miles would allow the carriers nearly double the rate now paid from California.

V.

RATES TO EASTERN AND WESTERN MARKETS FROM FLORIDA POINTS ON VEGETABLES TO BE REDUCED

TO PERMIT THE FLORIDA GROWERS AND SHIPPERS TO MEET COMPETITION FROM CALIFORNIA ON CELERY, AND FROM CUBA, MISSISSIPPI AND LOUISIANA ON OTHER VEGETABLES; AND IN NO CASE SUCH RATES TO EXCEED THE RATES ON SAME VEGETABLES FROM CRYSTAL SPRINGS, MISSISSIPPI, AND RATES SHOULD BE ESTABLISHED ON THE BASIS OF CARLOADS AND LESS THAN CARLOADS, WITH A PROPER DIFFERENCE THEREIN.

There are no carload rates on vegetables from Florida to the eastern markets. The competition with the grower of Florida vegetables is with California on celery, and with Cuba, Mississippi and Louisiana points on other vegetables.

A comparison of rates from Crystal Springs, Missisisppi, and Palmetto, Florida (Complainant's Exhibit "Chase No. 2") shows what the situation is. If we take Boston for illustration, the distance from Crystal Springs to Boston is 1,772 miles, and from Palmetto to Boston is 1,449 miles; and yet the rate per crate of vegetables from Crystal Springs to Boston is 39¾ cents and from Palmetto to Boston it is 73 cents. The rate from Crystal Springs to Boston per 100 pounds per 100 miles is 4.5 cents, while from Palmetto, Florida to Boston it is 10 cents; and a careful inspection of these comparative rates will show that it is utterly impossible, as the evidence discloses, for the Florida vegetables to reach the market in competition with Crystal Springs, Mississippi.

If, for further illustration, the rates are compared be-
42 tween Havana, Cuba, and Homestead, Florida, to cities east and west in the United States, it will be seen that the Florida producers occupy an impossible position, on account of the freight rates, in their efforts to market their vegetables in competition with Cuba. For illustration, the rates on tomatoes from Havana via Mobile, Alabama, to Cincinnati is 54 cents per crate of 50 pounds, while the rate from Homestead, Florida, to Cincinnati is 68 cents per crate of 50 pounds. The distance from Havana to Cincinnati, is 1448 miles, and from Homestead, Florida, to Cincinnati it is 1236 miles.

The facts above set forth certainly justify a reduction of rates on vegetables from Florida so that the producers may be permitted to compete in the markets with Crystal Springs and Cuba.

It is true that to the West, Crystal Springs is nearer to the market than Florida points, while to the east the distance is in favor of the Florida producer, and in order that both pro-

ducers may go into the market upon a fair basis the rates established from Florida should not exceed the rates from Crystal Springs.

VI.

RATES ON PINEAPPLES FROM FLORIDA POINTS SHOULD BE REDUCED SO AS TO PERMIT THE FLORIDA GROWERS AND SHIPPERS TO MEET COMPETITION FROM CUBA.

About 80 per cent. of the shipments of pineapples from Florida go in carloads (929-30), but notwithstanding this fact there are no carload rates whatever differing from the "any quantity" rate in effect from Florida to the eastern and
43 western markets. From an inspection of the testimony in this case of F. G. McMullin, a producer of pineapples in Florida, and the testimony of J. Leveron, who is engaged in the handling of pineapples at Cincinnati, it must be evident that the rates to the eastern and western markets, as compared with the rates on pineapples from Cuba are unreasonable and excessive, and that, unless relief is given to the pineapple producer in Florida, the result must necessarily follow, as it has in the New York market, that the Florida producer must get out of the principal markets.

In support of our claim that there should be a carload rate in effect on pineapples and that the present rates are unreasonable, little can be said other than to call attention to the conditions surrounding the Florida producer and the disadvantage at which he enters every market on the Atlantic seaboard and the interior; and when the evidence is reviewed it seems clear to us that the relief prayed for is necessary in order that the industry may be conducted and extended at a reasonable profit to the producer.

VII.

RATES ON STRAWBERRIES PER CRATE FROM STARKE AND LAWTEY, FLORIDA, TO EASTERN MARKETS SHOULD REMAIN AS NOW ESTABLISHED ON THE MINIMUM REQUIREMENT OF TWO HUNDRED (200) CRATES OR TEN THOUSAND (10,000) POUNDS TO THE CAR, BUT THE MINIMUM REQUIREMENT FOR LOADING A CAR SHOULD NOT EXCEED ONE HUNDRED AND FIFTY (150) CRATES PER CAR.

Little can be said in support of our position as to the rates on strawberries, other than to call the attention of the Com-

mission to the evidence, as we have heretofore done, which shows that under the present rates on strawberries,
44 bushels and bushels of the berries rot in the fields, and that while the rate on strawberries per crate is reasonable, the minimum requirement of two hundred (200) crates to the car is unjust and unreasonable, because, as is abundantly shown by the evidence, two hundred crates cannot be carried properly and in good condition in one car, and practically no berries from Florida are loaded two hundred (200) crates to the car.

We therefore submit that if the rates per crate are to remain on strawberries, the minimum loading of two hundred (200) crates per car should be reduced to not exceeding one hundred and fifty (150) crates per car.

VIII.

REFRIGERATION CHARGES ON FRUITS AND VEGETABLES FROM FLORIDA POINTS ARE UNJUST, UNREASONABLE AND EXHORBITANT AND SHOULD BE REDUCED TO A FAIR AND REASONABLE CHARGE TO COVER THE SERVICE RENDERED.

The difficulties with which the Commission has been confronted in other cases as to charges for refrigeration have been removed by the enactment of what is known as the "Hepburn Act," approved on the 29th of June, 1906; for, by the first section of that Act, "ventilation, refrigeration or icing" charges are now made a part of the transportation, and the carriers subject to the Act are required "to provide and furnish such transportation upon reasonable request therefor and establish through routes and just and reasonable rates applicable thereto." So that, at present, icing and refrigeration is a part of the transportation charge, and is required by the act to be reasonable.

45 A comparison between the charges for refrigeration from California and from Florida per car on vegetables and fruits is shocking, especially when we take into consideration the fact that it takes a car about fourteen (14) days under refrigeration to travel from Los Angeles, California, to New York, whereas it takes four (4) or five (5) days from Florida to New York. Necessarily more ice is required in refrigerating a car from California than from Florida. Further, while California ships oranges all the year around, the bulk of the shipment of oranges from Florida is over by the first of April, and while the charge for refrigeration on a car of oranges is $80 from Arcadia to New York, when that car is shipped in

the middle of winter, the charge over the same lines from Gainesville, Florida, to New York, on a car of cantaloupes shipped in the summer time, is only $48 per car. These comparisons demonstrate that the charges for refrigeation on oranges and vegetables from Florida points are unreasonable and unjust. By Section 15 of the Act to Regulate Commerce the Commission has the power to correct the wrong here shown.

It will be seen from an inspection of the contract of the railroad companies with the Armour Car Lines, that the railroads give to the Armour Company the exclusive right of icing cars; and a representative of the Armour line, Mr. Ellis, was produced by the defendants on the question of the cost of refrigeration. But he was unable to tell the cost of ice at Alexandria, Va., or at Los Angeles, California (824); nor was he able to tell the cost of icing a car from Los Angeles, California, to New York (825), nor whether the rate of $67.50 refrigeration from California to New York was reasonable (824).

We therefore submit that the evidence in this case
46 and that the inequalities as shown in the tabulation of refrigeration charges on oranges, vegetables and cantaloupes, show that the charges on vegetables and on oranges for refrigeration from Florida are unreasonable and unjust.

IX.

COST OF PRODUCTION AND PRICES

The record in this case discloses the following facts as to the cost of production and the market price of fruits:

1. STRAWBERRIES.

Mr. J. M. Truby testifies (309) that it costs $3.00 per crate of 32 quarts to raise strawberries, and that sales are made from $1.75 to $5.00 per crate, and once in a while as high as $6.00 per crate. Mr. James M. York, a dealer in fruits in Boston, testifies (146) that they pay 14 cents per quart for strawberries shipped by express, which would make $4.48 per crate. If the cost of production is $3.00 per crate and the rates are added for transportation and refrigeration to Boston and New York, it is evident that there is little or no margin for the producer of strawberries; in fact, it would appear that a great many of the strawberries were sold at less that the cost of production plus transportation and the average leaves but little for the Florida grower.

2. PINEAPPLES.

The normal price of pineapples (925) f. o. b. cars per crate is from $1.25 to $1.40, and the normal cost of production (926) is from 90 cents to $1.15 per crate. When we take into consideration that the bearing of a field of pineapples ends
47 in seven (7) years (926), and that the land in the rough costs from $100 to $150 per acre (927), it must be seen that there is little profit to the producer.

3. ORANGES.

The price of Florida oranges in the market is from $1.75 to $2.00 per box, and when it is taken into consideration that it costs about 60 cents per box to pick and pack the oranges and put them on the car (988), and the other cost of production is from 40 to 50 cents per box, making the total cost from $1.00 to $1.10 per box (1013), and that the rate to New York is 75½ cents per box, it is seen that there is very little profit to the producer (See evidence of D. S. Borland, 273; E. A. Thomas, 348; and the other witnesses whose evidence was taken at Jacksonville).

This Commission had under consideration the question of rates on citrus fruits from California in the recent case of The Consolidated Forwarding Co. vs. Southern Pacific Co., et al., 10 I. C. Rep. 590, where it was charged that the rate of $1.25 per 100 pounds on Florida oranges was unreasonable and that the refrigeration charges were unreasonable. It will be remembered that Mr. James Menzies, of the Atlantic Coast Line (53-6-7) and Mr. Thomas (383) of the Southern Pacific, testified that the rate of $1.25 from California, was fixed by competition with Florida at a time when the rates from Florida were the same as now, and nearly two years after the decision of the Commission in the above case that the rates should be reduced 15 cents, the carriers reduced the rate from California $1.25 to $1.15, leaving the rates which had theretofore been fixed from Florida in competition with the rate of $1.25 from
California the same; and in speaking of this rate of $1.25
48 from California in the above case, Mr. Commissioner Prouty says (620):

"The orange rate as orginally established was a competitive rate intended to enable the California grower to meet, first, the competition of Florida; second, the competition of the foreign producer. It has apparently accomplished both those purposes. The producer in Cali-

fornia is certainly upon a level with the Florida producer in the matter of freight rates, and the foreign orange no longer comes into serious competition with the California product."

If this statement of Mr. Commissioner Prouty is correct, and the record amply sustains it, when the rate of the California producer was reduced from $1.25 per 100 pounds to $1.15, it left the Florida producer with a rate so high that he could no longer hope to compete with California in the markets. Upon this same subject Mr. Chairman Knapp, in the same case (p. 627) says:

"In view of the exceptional degree of prosperity which the orange growers of California enjoyed until their production exceeded the consuming capacity of the country, in view of the fact that the rate applied enables them now to reach the most distant markets in the Eastern States, to the virtual exclusion everywhere of the foreign-grown orange, and even to the exclusion of the Florida orange except for limited periods of the year."

and, in view of these indicated facts takes the position that the rate of $1.25 per 100 pounds should not be reduced.

In the light of these findings in the above case, we insist that when the rate of $1.25, which had already excluded the
49 Florida orange except for short periods from the markets both east and west, is reduced, it is necessary that the Florida rate should be reduced in order that its producers may survive.

It is further apparent from consideration of the above case on the question of refrigeration charges, that the Armour Car Lines Company renders service for the carriers on the Pacific Coast at a much less rate and upon much more favorable terms than to the Florida carriers. The Armour Company for the use of its cars receives from the California carriers six-tenth (.6) cents per car per mile on eastbound traffic and the same mileage on westbound traffic when the cars are loaded. From Florida this Armour Company receives from the carriers ¾ cent per per mile loaded and empty. Further, the Armour Company has a rate from California for winter refrigeration of about $7.50 per car less than the summer charge, and yet from Florida the Armour Company charges less for the re-

frigeration of a car of cantaloupes in the summer time than it charges for refrigeration of a car of oranges or vegetables in the winter time; and by comparing the rates of refrigeration as found in the case of The Consolidated Forwarding Company vs. South-Pacific Co., supra, with the present rates, as shown by the tabulations in this case, it will be seen that the rates of refrigeration from California have been reduced since 1905, whereas the Florida rates of refrigeration remain the same.

We have endeavored to show to the Commission, first, the necessity for relief to the Florida shipper and producer of vegetables and fruits in order that the Florida products may reach the markets of the country, and, second, what relief in our judgment should be given. We therefore submit this case in the hope that the finding of the Commission may bring about a re-adjustment of rates and a proper reduction thereof, which will increase the volume of business, thereby giving better returns to the carrier and a wider market to the producer and enabling him to meet competition and secure to the consumer the benefits thereof.

50

Respectfully submitted,

WM. A. GLASGOW, JR.,
Counsel for Complainant.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

The Florida Fruit and Vegetable Shippers' Protective Association

vs.

The Atlantic Coast Line Railroad Company; Florida East Coast Railway Company, et al.

Complaint Seeking Reduction of Rates on Vegetables and Fruits.

Brief of Florida East Coast Railway Company.

Filed May 11, 1908.

Alex. St. Clair-Abrams, Attorney and Solicitor for Florida East Coast Railway Company.

IN THE INTERSTATE COMMERCE COMMISSION

The Florida Fruit & Vegetable Shippers' Protective Association, vs. Florida East Coast Railway Company, et al.

BRIEF OF FLORIDA EAST COAST RAILWAY COMPANY

So far as the E. C. Railway is concerned the only testimony brought against this Company of which I am advised, was given by a Mr. McMullan, who complained that the pineapple rates from Havana, Cuba, to Western markets, tariff duty added, are something like four (4) cents a crate less than from points in Florida to the same markets. Even if this were true, I submit it would be no criterion by which the Commission could act, since the steamship rates from Havana to Mobile are entirely beyond the control of the American maker of rates, and it is not pretended that railroads can carry freight as cheaply as steamship lines can. The statement, however, was shown to be incorrect since the complainants had neglected to add the cost of 8c. to 10c. a crate incurred by the Cuban grower in getting his pineapples to the ship, so that if there were no other considerations involved, the actual cost to the Cuban grower is from four to six cents a crate more to the same points, via steamship to Mobile or New Orleans, than it is from Florida

2 all rail to the same points.

Furthermore, the Florida pineapple grower possesses two advantages over the Cuban grower:

1. The mass of his crop is in the market when there are few or no Cuban pineapples to compete with it.

2. The average price paid for Florida pineapples is higher than is paid for Cuban pineapples.

There must also be taken into consideration the further fact of the smaller loss from rotting and other causes when shipped all rail than is incurred when a large proportion of the distance is traversed by water transportation.

Still another consideration must address itself to the Interstate Commerce Commission and it is, the saving effected to the Florida pineapple grower estimated, according to the testimony, at not less than ten cents per crate by reason of the unusual and extraordinary facilities provided by the Florida East Coast Railway Company to its shippers in the numerous sidings, spurs and platforms at distances of a mile apart in the pineapple growing section and right through the pineapple farms, thereby saving to the growers the cost of transporting the pineapples over the heavy sandy roads to the packing houses and back again to the railroad.

As regards the general complaint of the complainants that the rates on pineapples and vegetables have not been reduced for many years, the testimony shows this to be incorrect as the tabluated statement of such products filed in evidence will show.

At the very start then the complaint of the complainants, so far as the Florida East Coast Railway is concerned,
3 fails for want of evidence.

CARLOAD LOTS

One ground of complaint is that carload rates on fruits and vegetables to points in the West have not been given. Admitting that a carload rate would and will be of value to shippers, I submit for the Florida East Coast Railway that the rates now allowed to the Florida East Coast Railway Company by the Florida State Railroad Commission should not only remain undisturbed but that, if a rate is put upon carload lots, this rate should remain as at present and the rate on small lots increased. I submit, however, that the Interstate Commerce Commission should not interfere with the rates on the Florida East Coast Railway, and for the following reasons:

1. The Florida East Coast Railway is an exclusively intrastate railroad; it owns no line of railroad beyond the limits of the State of Florida; it makes no through rates with other lines to or from the State; it simply adds the freight rate allowed by the Railroad Commission of Florida to the rates allowed by the Interstate Commerce Commission on interstate freight rates from and to Jacksonville. For the convenience of the general public it issues Bills of Lading from points on

its line in Florida to points beyond; but, in doing so, acts simply as the agent of the shipper, and rebills all freight at its terminal at Jacksonville.

REDUCTION IMPRACTICAL

The evidence before this Commission shows that for the past thirteen years the Florida East Coast Railway has had an average deficit of over $254,000.00 per annum. The great mass of its vegetables and fruit is carried in carload lots and to make a reduction on the existing rates allowed by the Railroad
4 Commission would simply increase this deficit and further impair if not entirely destroy its solvency. The fact that pineapples, oranges and vegetables generally have steadily increased in volume every year, save when destroyed by floods or frost, is conclusive that the present rates now charged are fairly reasonable and no hindrance to development, and that it must be profitable to the growers or the area under cultivation would not be continuously increased in spite of climatic setbacks every few years.

The right of a railroad company to earn its operating expenses, fixed charges and a reasonable profit on the value of its property has been repeatedly affirmed and numerous decisions of the Supreme Court of the United States have sustained injunctions granted to prevent reduction of rates; the courts sustaining the general propositions above advanced.

Reaghan vs. Farmers Loan & Trust Co. 154 U. S. pp. 402.
Union Pacific R. R. Co. vs. United States, 99 U. S. pp. 408.
Smythe vs. Ames, 169 U. S. pp. 466.
State vs. Minneapolis & St. L. Ry. Co., 83 N. W. Rep. pp. 60.
Chicago & N. W. R. R. Co. vs. Day, 35 Fed. Rep. pp. 866.
Southern Pacific Ry. Co. vs. Board of County Com., 78 Fed. Rep. 236.
Pensacola & Atlantic R. R. Co. vs. State, 25 Fla. pp. 310.

PRACTICALLY NO COMPLAINANTS.

So far as I can ascertain, but one grower appeared to sustain the complaint against the Florida East Coast Railway and he admitted that his pineapple orchard was nearly
5 two miles from the railroad and he had to haul his pines over heavy sandy roads. The same witness also admitted the unusual and extraordinary facilities afforded shippers on this line of road and the evidence shows that these facilities reduce the expense of shipping from 8 cents to 10 cents per crate.

It is also shown that the allegation of the complaint as to shipment of pineapples from Cuba is not correct. In the first place the East Coast Railway Company does not and has not for a long time transported a single crate of pineapples from Cuba; in the next place the complainants entirely ignored the cost of getting the pineapples to ship-board at Cuban ports which more than made up any difference between the freight rates from Cuba and the through rail rates; furthermore this Commission will take into consideration the difference between water transportation and all rail transportation; and, besides this, I submit that the Commission cannot base rates upon what steamship companies charge from Cuban ports since the only consideration must be what the railroads can reasonable afford to handle the traffic for.

As will be observed from the testimony, the Florida East Coast has accumulated no surplus for extraordinary contingencies; made no allowance for wear and tear and depreciation or for casualties and accidents as it would have been authorized to do under the various decisions of the Federal Court and suggested by this Commission in the First Interstate Commerce Commission Report, page 560, and see also the following authorities:

Reagan vs. Farmers Loan & Trust Co., 54 U. S. 362.
Little Miami & Columbus & X. R. R. Co., vs. United States, 108 U. S. 277.
6 Union Pacific R. R. Co. vs. United States, 99 U. S. 402.
Metropolitan Trust Co. of City of New York vs. Houston & T. C. R. Co. et al., 90 Fed. Rep. 683.
Union Pacific R. R. Co. vs. Freeman, 174 U. S. 379.

Any further reduction of the rates on vegetables and fruits on the East Coast would be in violation of the repeated decisions of the Supreme Court.

As to fair value of the services rendered to the public by the Railroad Company.

Union Pacific R. R. Co. vs. Freeman, 174 U. S. 249.
Covington & Lexington Turnpike Road Co. vs. Sanford, 164 U. S. 578.
Transportation Co. vs. Parkersburg, 107 U. S. 691.

The present value of the East Coast Railway Company's property is estimated at over $16 000,000.00, and this is not contested by the complainants. In the case of Consolidated Gas Co. vs. Mayer, 146 Fed. Rep. 150, the court held that a cor-

poration was entitled to fair compensation for services rendered the public and is entitled to earn a reasonable profit upon its entire intrastate business.

Smythe vs. Ames, 169 U. S. 466.
Chicago vs. Tompkins, 176 U. S. 167.
A. C. L. vs. State of Fla., 203 U. S. 256.
St. Louis R. Co. vs. Gill, 156 U. S. 649-655.
Minnesota etc. R. R. Co. vs. Minneesota, 186 U. S.
7 257.
Stanislaus County vs. Irrigation Co., 192 U. S. 201.

INJUNCTION PENDING

As will be seen from the certified copy of the bill in equity now pending between the Trust Company of America, Trustee for the bondholders of the Florida East Coast Railway Company, and the Railway Company and the Railroad Commissioners, the defendants have been enjoined from reducing the rates on passengers and on certain classes of freight. As the object of the bill was to prevent any further reduction of any freight or passenger rates, I submit that the showing made by the bill, a copy of which has been filed in the case, will convince the Commission of the inadvisability of any further reduction of rates as prayed for by the complainants. I submit also that the Commission will take into consideration that while the injunction does not specify other lines of freight, still the purpose and object of litigation is to prevent any reductions whatsoever in the face of the business and the expenses necessary to maintain the road and to efficiently perform its service.

ENORMOUS INCREASE OF EXPENDITURES.

Owing to the recent laws of Congress and of this State and to the increase in the price of equipment, material and labor, the expenses of the Florida East Coast Railway Company has increased out of proportion to the increase of its business, as shown by its annual reports. Even the increase of business on this road has not been due so much to natural development as to the extension of the line of road from Miami to Key West which has brought thousands of laborers to the southern end
of the road; built up an abnormal traffic for the time be-
8 ing at Miami, nearly doubling the sales of passenger tickets at the latter place and largely increasing the freight receipts in Miami. With the removal of the headquarters of operation from Miami to Knight's Key and the

large reduction in the force of laborers engaged on the work there is not much liklihood of any material increase in the business until there has been further development of the territory contiguous to the line of road.

A FRIVOLOUS COMPLAINT.

So far as the Florida East Coast Railway Company is concerned. I submit that the complaint against it is frivolous and that involving it in the expense of this litigation has been unjust and inequitable. That out of the thousands of growers of oranges. pineapples and vegetables on the line of road. but one witness could be found to appear against the road to complain of the rates, is I submit, conclusive evidence that the allegations of the complaint are unfounded as against this road and I respectfully ask that the complaint be dismissed as to the Florida East Coast Railway Company.

ADDITION TO BRIEF.

The brief of complainants was not forwarded to counsel for the Florida East Coast Railway Company until after the foregoing had been printed and the writer is indebted to the courtesy of Mr. Edward A. Moseley. Secretary of the Interstate Commerce Commission, for a copy. received on the 4th of May.

I respectfully submit that in the brief counsel has been grossly unjust in his references to the rates from Cuba on pineapples in comparison with the rates from Florida points
9 to Eastern and Western markets. In the first place, the statement that it costs from three to five cents to get the pineapples to the harbor at Havana has not been proven. The testimony for the Florida East Coast Railway Company shows that it costs from eight to ten cents.

In selecting Boynton. Florida, as the basing point, counsel have selected a point not in the center of the pineapple region; Jenser, considerably north, being the center of the territory in which the great mass of the pineapples are grown and from which they are shipped.

So likewise in the statement as to the rates on vegetables on the Florida East Coast Railway, Homestead, at the extreme southern end of the line of the Florida East Coast Railway, where but few tomatoes are raised or shipped, is selected,—this place being on the extension of the Florida East Coast Railway between Miami and Key West.

It is scarcely necessary to call the attention of the Commission to the fact that counsel has taken the extremes of rates and points from which there are comparatively few shipments.

In the matter of the evidence of Mr. J. Leveron (page 927 of the record of testimony), the Florida East Coast Railway Company offered to meet his statement in regard to shipments of pineapples from Cuba over the Florida East Coast Railway, but Mr. Commissioner Prouty decided that no further evidence on the part of the Florida East Coast Railway Company was necessary. We stood prepared to show that not a crate of pineapples had been shipped over the Florida East Coast Railway from Cuba for a considerable period of time, and that the one occasion (for a few weeks) when pineapples were carried over the Florida East Coast Railway from Cuba was during a rate war for a few weeks when, for the protection of the pineapple grower, it became necessary; when the rates via Cuba and Mobile were re-established, the Florida East Coast Railway Company ceased to receive any shipments from Cuba, it being impossible to transfer them all rail at the same rate as by rail and water.

On page 15 of complainants' brief is an Exhibit of rates on tomatoes from Havana, Cuba, via Mobile, Alabama, and from Homestead, Florida, all rail, to various points for the purpose of showing the increased rate all rail. This comparison is not only grossly unjust to the Florida East Coast Railway Company, but I am compelled to conclude was deliberately made for the purpose of deceiving this Commission. Homestead is on the line of the extension between Miami and Key West and, because of the paucity of population and the enormous cost of construction, a special rate was given to this extension by the Railroad Commission of Florida.

Furthermore, the shipment of tomatoes and other vegetables from between Miami and Homestead to all points is less than two per cent. of the entire shipments handled by the Florida East Coast Railway Company. Over ninety-eight per cent. of tomatoes, as well as other vegetables, is shipped from the territory between Ft. Pierce and Miami; and, for the purpose of developing the industry, a flat rate was given to all the shippers between these points, largely less in the aggregate than the brief quotes. It is clearly evident that the complainants when making out their case, ascertained that they could not make any comparison in their favor from points where the bulk of the traffic existed and were compelled to seek a point where but little or no traffic is in existence.

The following shows the rates from Ft. Pierce to Miami on tomatoes as well as other vegetables by car load lots, all rail,

as compared with the rates from Havana, Cuba via Mobile, to the same point, rail and water, lighterage and duty added.

The duty on tomatoes and other vegetables is 25 per
11 cent. ad valorem and the average duty is, I understand, somewhat in excess of 25 cents per crate. Fixing it, however, at 25 cents and adding for vegetables 5 cents per crate for delivering to the steamer, we have a total of 30 cents per crate to be added to the cost of each crate.

RATES ON TOMATOES

Havana, Cuba, via Mobile, Ala.			Ft. Pierce extending to Miami, (All Rail).
		TO	
Per Crate of 50 Lbs.	Miles.		Per Crate of 50 Lbs
		.....Baltimore, Md	
		.....Boston, Mass.	
86	1894	.....Buffalo, N. Y. 1682	57
81	1753	.....Chicago, Ill. 1541	57½
84½	1448	.....Cincinnati, Ohio 1236	50
86	1711	.....Cleveland, Ohio 1499	58
83½	2301	.....Denver, Colorado 2149	79
....	....	.....Des Moines, Iowa 1728	*
81	1555	.....Indianapolis Ind. 1343	56¼
....	....	.....Jacksonville, Fla. 394	
80	1884	.....Kanssa City, Mo. 1672	58
83½	2287	.....Minneapolis, Minn. ... 1975	63
....	....	.....Montreal, Canada 1822	66½
....	....	.....Nashville, Tenn. 1047	48
....	....	.....New York City, N. Y... 1418	68
82	2014	.....Omaha, Nebraska 1802	60½
....	....	.....Philadelphia, Pa. 1328	65
77	1601	.....St. Louis, Mo. 1389	55¼
86	1759	.....Pittsburg, Pa. 1547	56¾
....	....	.....Washington, D. C. ... 1190	....

*No through rate.

The above rates are in carload lots, there being a carload rate from Jacksonville to points North and West, and the great mass of the vegetables being shipped in carload lots.

Although the rates from Havana, via Mobile, are not
12 given to Baltimore, Boston, Montreal, Nashville, New York City and Washington, still an examination will show that the rates to these points duty and lighterage added, are larger than from points on the East Coast Railway, all rail.

The rates given for vegetables are the rates charged per crate for carload lots.

RATES ON PINEAPPLES.

So, likewise, in making comparison of rates on pineapples the same unfairness and deliberate misrepresentation are indulged in. Boynton, the point selected, is a part of the pineapple region where less than 35 per cent. of all pineapples are shipped, while Jensen, which is the center of the region which ships over 65 per cent. of the pineapple crop, is ignored. In the estimate on page 18 of complainants' brief the duty and lighterage are not included. In the comparison given below the rate from Jensen is given and the rate from Havana, Cuba, via Mobile, duty and lighterage added, is also given. In the comparison in complainants' brief only the all rail route is considered, counsel ignoring the fact that there is also a rate via water to a number of points, which rate is considerably lower. For instance, the rate, via rail and water, from Jensen to Baltimore, Maryland, is 65 cents, whereas all rail it is 71½ cents. The rate from Jensen to Boston, via rail and water, is 70 cents, whereas, all rail it is 83 cents. The rate to New York City and Philadelphia, rail and water, is 65 cents, whereas all rail to Philadelphia it is 72½ cents and all rail to New York City it is 74½ cents. In other words, duty and lighterage added, the existing rates are less at practically every point than from Havana, Cuba, via Mobile, Alabama.

13 RATES ON PINEAPPLES

Havana, Cuba. (Via Mobile, Ala.) Per Crate of 80 Lbs.	Miles.	TO	Miles.	Jensen, Fla. (All Rail.) Per Crate of 80 Lbs
83.15	....	.....Baltimore, Md.	1151	71½
....	....	.....Boston, Mass.	1568	83
90	1894	.....Buffalo, N. Y.	1600	85
81½	1753	.....Chicago, Ill.	1459	83½
75	1448	.....Cincinnati, Ohio	1154	70
80½	1711	.....Cleveland, Ohio	1417	82½
119	2301	.....Denver, Colorado	2069	124
104.2	1940	.....Des Moines, Iowa ...	1646	*
81½	1555	.....Indianapolis, Ind.	1261	80
....	....	.....Jacksonville, Fla.	312	24
97	1884	.....Kansas City, Mo.	1500	103
111.4	2287	.....Minneapolis, Minn. ...	1879	101.2
....	....	.....Montreal, Canada	1740	95.9
....	....	.....New York City, N. Y..	1336	74½
109	2014	.....Omaha, Nebraska	1720	103.6
89½	1759	.....Pittsburgh, Pa.	1465	84½
....	....	.....Philadelphia, Pa.	1246	72½
79½	1601	.....St. Louis, Mo.	1309	78
109	....	.....Sioux City, Iowa	1865	106.6
....	2163	.....Washington, D. C. ...	1111	71½

*No through rate.

It is preposterous for counsel to comment on the difference in the price of labor in Cuba and the United States, or on the use of fertilizers, since, if the Interstate Commerce Commission is to arbitrarily fix rates on American railroads based on the cost of production in foreign countries, it would be to cast upon railroad companies the entire burden of equalizing this difference, and such a policy, carried to its ultimate conclusion would convert the railroad companies into guarantors to producers of a profit on their production. This, too, losing
14 sight of the notorious fact that the American production, as a general rule, commands a higher price than the foreign production; and furthermore, that only for a short period of time does the product of the foreign country compete with the American product.

The only method by which this difference between the cost of foreign production and American production can be equalized is by Congress adding to the duty on pineapples a sum sufficiently large to protect the American producer. When the last tariff bill was passed pineapples were entirely neglected, while tomatoes and oranges were given better protection. For instance, at an average of $1.50 per crate for pineapples with the same 25 per cent. ad valorem imposed on tomatoes, the duty would be 37½ cents per crate instead of 14 cents as it is now arbitrarily fixed at. To require the railroad companies to equalize this difference between the cost of production in foreign countries and in the United States would be in effect to bankrupt every railroad in the State of Florida. This proposition is absurd.

In a like manner the comparison between California and Florida rates is made solely upon the basis of price and mileage. No consideration appears to be had of the volume of freight, the population and the mileage of the Florida roads; all of w'ich must enter into consideration in determining the reasona eness of a freight rate. The Florida East Coast Railway operates between Jacksonville and Miami and on its branches, an average of 14 miles of railroad to every thousand of resident population, or an average of 71 men, women and children for every mile of railroad it operates. On the extension between Miami and Key West the figures are even more startling, the total not exceeding at this time an average of 30 persons to the mile, residing on the line.

In California there is a great volume of freight to and from the different points on the line of railroads there. In Florida on the Florida East Coast Railway freight cars are car-
15 ried south loaded with general merchandise and returned empty, the cars used for general freight being unserviceable for vegetables and pineapples. The cars used for pine-

apples and vegetables are carried south empty and brought back loaded or partly loaded. It will thus be seen that a large proportion of the total number of freight cars on the Florida East Coast Railway are "empties," there being no return frieght to which the cars handled loaded can be applied.

In his zeal to make out a case for his client counsel for complainants has not hesitated to suppress the true facts where they are properly applicable, to omit the points from which the great mass of the fruits and vegetables are shipped, and to select isolated and remote localities for the purpose of maintaining the contention of his clients.

The argument in the brief that, unless the rates are reduced, the pineapple, fruit and vegetable industry will perish is too ridiculous in the face of the steady increase of production every year notwithstanding drawbacks of weather. That the great majority of producers on the line of the Florida East Coast Railway are prosperous can be seen at a glance by any one traveling through the pineapple, fruit and vegetable region, and the steady enlargement of acreage is conclusive that these industries have been and continue fairly profitable.

I respectfully submbit that, in the face of the facts and figures stated here, the arguments in the complainants' brief should have no consideration in the mind of the Commission. A glaring example of this is found in the fact that he ignores entirely the carload rates on tomatoes and vegetables from Ft. Pierce to Miami where the same rate exists and where, without a single exception, the average is nearly twenty cents per crate less than it is from Havana, Cuba, via Mobile;
16 while, in the matter of pineapples, there are but two or three points where the rate from Jensen is not less than from Havana. And, if the Commission deducts from this rate from Jensen, or even from Boynton and Homestead, the saving effected by the shipper from the remarkable facilities offered by the Florida East Coast Railway, the average rate, both on pineapples, vegetables and fruit, will be found to be less to every point than from Havana, Cuba, via Mobile, Alabama.

Respectfully submitted,

(Signed) ALEX ST. CLAIR-ABRAMS,

Attorney and Solicitor, Florida East Coast Railway Co.

Opinion No. 698.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

No. 1168.

Florida Fruit & Vegetable Shippers' Protective Association

v.

Atlantic Coast Line Railroad Company et al.

Submitted May 11, 1908. Decided June 25, 1908.

W. A. Glasgow for complainant.

S. F. Andrews, F. C. Dillard, W. D. Chase, E. G. Buckland, and *A. St. Clair Abrams* for defendants.

45751-082

Report and order of the Commission.

[See 14 Interstate Commerce Commission Reports, pp. 476 to 509. Not printed; by stipulation of counsel.]

"PETITIONER'S EXHIBIT 3"

BEFORE THE INTERSTATE COMMERCE COMMISSION.

Florida Fruit and Vegetable Shippers Protective Association

vs.

Atlantic Coast Line Railroad Company;
Seaboard Air Line Railway; Southern Railway Company;
Florida East Coast Railway Company, et al.

No. 1168.

To the Interstate Commerce Commission:

2 Petitioner asks leave to file this its Supplemental Petition in the above cause and shows:

1. On June 25, 1908, the Interstate Commerce Commission decided the above cause and entered its order requiring the defendants to reduce their joint rates on oranges, pineapples and other citrus fruits and vegetables to Baltimore, Philadelphia, New York, Boston, Buffalo and Pittsburg and to these points Petitioner is informed that the Defendants have filed tariffs conforming to the order of the Commission aforesaid.

2. That while the order aforesaid does not specially mention interior points to which rates have been heretofore relatively adjusted with reference to the points named in said order, Petitioner believes that the intention of the Commission was that to such interior points the rates should also be correspondingly reduced and Petitioner alleges that the rates to such interior points should be so reduced.

Petitioner, therefore, prays that the order heretofore entered in this cause may be amended and enlarged so as to cover a reduction in rates to the interior points corresponding to the reduction ordered by the Commission to the points named in the order aforesaid and Petitioner shows that the importance of early action on this Supplemental Petition is very great if Petitioners are to benefit during the present season by the order of the Commission aforesaid.

Respectfully submitted,

WM. A. GLASGOW, JR.,

Counsel for Florida Fruit and Vegetable Shippers' Protective Association.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 21st day of October, A. D. 1908.

Present:

MARTIN A. KNAPP,
JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANCIS M. COCKRELL,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN.
Commissioners.

No. 1168.

Upon consideration of the supplementary petition of the Florida Fruit and Vegetable Shippers Protective Association against Atlantic Coast Line Railroad Company, et al., dated October 20, 1908:

IT IS THEREFORE ORDERED, That the defendants need not formally answer said petition unless so advised, in which event such answer shall be filed with the Commission on or before October 30, 1908.

THAT the matter be set down for hearing at Washington at 10 o'clock in the forenoon of Saturday, October 31, at which time the parties will be heard by oral testimony and in argument.

THAT a copy of said petition together with this order be served upon the several defendants forthwith.

A true copy:

[Seal of Interstate Commerce Commission.]

(Signed) E. A. MOSELEY,
Secretary.

Petitioners' Exhibit No. 2"

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of December, A. D., 1908.

Present:

MARTIN A. KNAPP,
JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANCIS M. COCKRELL,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN.
Commissioners.

No. 1168.

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

v.

ATLANTIC COAST LINE RAILROAD COMPANY; SEABOARD AIR LINE RAILWAY; SOUTHERN RAILWAY COMPANY; FLORIDA EAST COAST RAILWAY COMPANY; GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY; CLYDE STEAMSHIP COMPANY; GAINESVILLE & GULF RAILROAD COMPANY; TAMPA & JACKSONVILLE RAILROAD COMPANY; TAVARES & GULF RAILROAD COMPANY; LOUISVILLE & NASHVILLE RAILROAD COMPANY; MOBILE AND OHIO RAILROAD COMPANY; WABASH RAILROAD COMPANY; CENTRAL OF GEORGIA RAILWAY COMPANY; WESTERN & ATLANTIC RAILROAD COMPANY; NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; WASHINGTON SOUTHERN RAILWAY COMPANY; RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY; PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY;

PENNSYLVANIA RAILROAD COMPANY; CENTRAL RAILROAD COMPANY OF NEW JERSEY; BALTIMORE & OHIO RAILROAD COMPANY; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; SOUTHERN PACIFIC COMPANY; GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY; TEXAS & PACIFIC RAILWAY COMPANY, AND TEXAS & NEW ORLEANS RAILROAD COMPANY.

ORDER

Upon consideration,

IT IS ORDERED, That the previous order in this case of June 25, 1908, be, and it is, so modified as to permit the charging by the defendants of a rate upon oranges in carloads from Jacksonville and other base points to Pittsburg, Pennsylvania, of 52 cents and to Buffalo, New York, of 53 cents, to be observed as maxima at those points instead of 51 cents, as specified in said original order.

2 IT IS FURTHER ORDERED, That a copy of this order be served upon each of the parties to said case.

A true copy:

[Seal of Interstate Commerce Commission.]

(Signed) EDW. A. MOSELEY,
Secretary.

"PETITIONER'S EXHIBIT 7"

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 27th day of January, A. D., 1909.

Present:

MARTIN A. KNAPP,
JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANCIS M. COCKRELL,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN.
Commissioners.

No. 1168.

FLORIDA FRUIT AND VEGETABLE SHIPPERS PROTECTIVE ASSOCIATION.

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Upon consideration of the record in the above entitled case, and pursuant to motion made for that purpose by the Florida Fruit and Vegetable Shippers Protective Association, the complainants therein,

IT IS ORDERED: That said case be, and it is hereby, reopened, and the supplemental petition hereto attached be filed.

IT IS FURTHER ORDERED: That a copy of the supplemental petition be served upon each of the defendants named therein, and a copy of this order be served upon each of the parties to said case with the understanding that the question of a further hearing will be held for consideration and determination hereafter.

A true copy:

[Seal of Interstate Commerce Commission.]

(Signed) E. A. MOSELEY,
Secretary.

Filed Jan. 27, 1909.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

No. 1168.

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Atlantic Coast Line Railroad Company; Seaboard Air Line Railway; Southern Railway Company; Florida East Coast Railway Company, et al.

To the Interstate Commerce Commission:

2 Petitioner, the Florida Fruit and Vegetable Shippers' Protective Association, respectfully asks leave to file this supplemental Petition in the above cause, No. 1168, making additional defendants as indicated above.

And petitioner says that by reason of the order entered in this cause on the 25th day of June, 1908, and the amended order entered herein, on the 9th day of December, 1908, this Commission has fixed the maximum rates to be charged on oranges, grape fruit and lemons from Florida points to the points mentioned in the orders aforesaid; and the rates to be charged from Florida points on pineapples have also been fixed by the Commission, and the carriers have filed tariffs covering the rates on oranges, grape fruits and lemons, and, as petitioner is informed, will, on or before the first day of February, 1909, file tariffs covering shipments on pineapples.

Petitioner says that the maximum rates ordered by the Commission on oranges, grape fruit and lemons, as appears from the order of the said Commission, were intended to apply to shipments from Jacksonville and other base points, proper in said State, proper; whereas, petitioner is informed that the railway companies defendants only apply the rates ordered by the Commission, on shipments from said base points when said shipments originate from beyond.

3 And the petitioner prays that an order be entered by this Commission requiring the application of the rates aforesaid on shipments from Jacksonville and other base points proper.

Petitioner further calls attention to the opinion of the Commission in this cause, of June 25th, 1908, at page 496 *et seq.*, on the subject of rates on vegetables, and especially to the fol-

lowing quotation from the opinion of the Commission, at page 500:

> "We are strongly of the impression that carload rates should be established upon vegetables to eastern markets. Such rates should be approximately, per crate of 50 pounds from base points, 33 cents to Baltimore, 34 cents to Philadelphia, 36 cents to New York, and 42 cents to Boston, with corresponding rates to interior points. Vegetables from California take a minimum of 20,000 pounds, and probably this or a slightly less minimum could be satisfactorily applied from Florida."

Petitioner charges that at present there are no carload rates in effect on vegetables to the Atlantic Seaboard markets and interior points from Florida, but that the rates are for any quantity; and petitioner says that there should be established by the said carriers, carload rates from Florida base points, proper, to the markets along the Atlantic Seaboard and interior points, and that such carload rates should not exceed, per crate of 50 pounds, from Florida base points, 33c. to Baltimore, 34c. to Philadelphia, 36c. to New York, and 42c. to Boston, with corresponding rates to interior points; and that there should be established by the carriers a minimum carload of 18,000 pounds.

Petitioner says that although the carriers serving the shippers of vegetables from Florida into the eastern territory aforesaid have been requested to establish carload rates
4 to said territory upon vegetables, they have failed and declined to establish such carload rates, and petitioner is without remedy in the premises except by the order of this Commission.

Wherefore, petitioner prays that it be permitted to file this petition as supplemental to its petition heretofore filed in this cause; and that the Commission require the carriers above set forth, parties defendant, to answer the same; and that the Commission require that the rates now in effect on oranges, grape fruit and lemons, and such rates as may be put in effect on pineapples, be applied from Jacksonville and other base points, proper, to destination; and that defendants, or such of them as are engaged in carrying vegetables all rail from Florida base points, to wit, Jacksonville and Gainesville, proper, to Atlantic Seaboard markets, be immediately required to file a tariff of carload rates upon vegetables, upon a minimum loading of 18,000 pounds, and that such rate shall not exceed, per crate of 50 pounds, from Florida base points,—Jacksonville

and Gainesville,—proper, 33c. to Baltimore, 34c. to Philadelphia, 36c. to New York, and 42c. to Boston, with corresponding rates to interior points.

And petitioner prays that it may have an early hearing of its complainant, as expeditious relief is necessary if the large crop of vegetables in Florida which will be coming into the market in the near future is to be moved by the carriers serving the shippers aforesaid.

And your petitioner will ever pray.

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION.

By WM. A. GLASGOW, JR.,
Counsel.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

Florida Fruit & Vegetable Shippers'
Protective Association,

vs.

Atlantic Coast Line Railroad Company,
Florida East Coast Railway Company, et als.

ANSWER OF FLORIDA EAST COAST RAILWAY COMPANY TO SUPPLEMENTAL PETITION.

Filed Feb. 8, 1909.

And now comes the Defendant, the Florida East Coast Railway Company by Alex. St. Clair-Abrams, its Attorney, and for an answer to the supplemental petition of the complainant herein says that the matters and things set forth in the complaint and in the supplemental petition have already been adjudicated in so far as this defendant is concerned in that the Interstate Commerce Commission has decided and adjudged that the rates paid to the Florida East Coast Railway Company are just, and proper, and no change in said rates has been made by the Interstate Commerce Commission.

And further answering this defendant says that it has no line of road running from Jacksonville to any point North, but carries all freight to Jacksonville and delivers the same to the connecting railroads doing an interstate business; that it charges and receives only the rates allowed by the Railroad Commission of Florida, adding thereto the rate from
2 Jacksonville to points North and West authorized to the railroads doing an interstate business; that it charges only the rates allowed by the Florida Railroad Commission to base points in Florida and delivers the same to the connecting lines doing an interstate business.

This defendant further sets forth that it has no line of railroad to Gainesville, Florida; that its line of railroad is exclusively in the territory east of the St. Johns River, except that, by traffic arrangement with the Atlantic Coast Line Railroad Company, it operates over the line of that road from Enterprise Junction in Volusia County to Sanford, Florida, where it connects with the Atlantic Coast Line Railroad, and that no freight to points beyond the State are ever shipped or routed via Sanford.

The defendant further says that all vegetables and fruit destined for points beyond the State of Florida, coming over the

line of this defendant's road, are routed to Jacksonville, the terminus of defendant's road, and delivered to connecting lines there, as hereinbefore set forth.

The defendant, the premises considered, therefore prays that the supplemental petition be dismissed as to this defendant, the Florida East Coast Railway Company.

(Signed) ALEX. ST. CLAIR-ABRAMS,
Attorney for Florida East Coast Railway Company.

3 STATE OF FLORIDA
COUNTY OF ST. JOHN'S

Personally appeared before me J. P. Beckwith, Fourth Vice-President of the Florida East Coast Railway Company, who, being duly sworn, says that he is the Fourth Vice-President of the Florida East Coast Railway Company; that he has read the foregoing answer and that the matters and things set forth therein are true.

Sworn to and subscribed before me this 5th day of February, 1909.

(Signed) J. P. BECKWITH.

(Signed) THEO V. PENSAS
Notary Public State at Large.
My commission expires Aug. 9, 1911.
6—2587

INTERSTATE COMMERCE COMMISSION

Washington

I, JOHN H. MARBLE, SECRETARY OF THE INTERSTATE COMMERCE COMMISSION, do hereby certify that the papers hereto attached are true copies of that portion of the record in the cases of the Florida Fruit & Vegetable Shippers' Protective Association against the Atlantic Coast Line Railroad Company and others, docket No. 1168, and same against the Alabama & Vicksburg Railway Company and others docket No. 2566, itemized below, the originals of which are now on file and of record in the office of said Commission:

Petition in docket No. 2566, filed June 8, 1909.

Answer of Florida East Coast Railway Company in docket No. 2566, filed July 6, 1909.

Transcript of testimony taken in dockets Nos. 1168 and 2566 at Jacksonville, Fla., December 20 and 21, 1909.

Letter from Alex. St. Clair-Abrams to Secretary Edward A Moseley, dated January 7, 1910.

Letter from Alex. St. Clair-Abrams to Commissioner Charles A. Prouty, dated January 18, 1910.

Letter from Alex. St. Clair-Abrams to Commissioner Charles A. Prouty, dated January 20, 1910.

Protest of Florida East Coast Railway Company, filed January 24, 1910, to rescinding of decision of Commission in dockets Nos. 1168 and 2566.

Motion of Florida East Coast Railway Company, filed April 4, 1910, to rescind order and decision of Commission dated February 8, 1910.

Supplemental petition in dockets Nos. 1168 and 2566, filed May 4, 1911.

Brief for Florida East Coast Railway Company on supplemental petition to docket No. 1168.

Supplemental report and order of the Commision in dockets Nos. 1168 and 2566, dated June 20 1910.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed the seal of Commission, this 30th day of March, 1912.

JOHN H. MARBLE,
Secretary.

[Seal of Interstate Commerce Commission]

INTERSTATE COMMERCE COMMISSION

No. 2566

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

vs.

VARIOUS DEFENDANTS

PETITION

Filed June 8, 1909.

WILLIAM A. GLASGOW, JR.
Attorney,
415 Real Estate Trust Building,
Philadelphia, Pa.

CHARLES D. DRAYTON, *of Counsel,*
801 Colorado Building,
Washington, D. C.

Lawyers' Book Ptg. Co., 1111 Arch St.

INTERSTATE COMMERCE COMMISSION

No. 2566

Florida Fruit and Vegetable Shippers' Protective Association,

vs.

Alabama & Vicksburg Railway Company; and 200 railroads.

The petition of the above named complainant respect-
8 fully shows:

I. That complainant is an association formed by the growers, buyers and shippers of fruits and vegetables in the State of Forida for their mutual benefit and advantage in the growing, shipping and selling of fruits and vegetables grown and raised in the State of Florida, with headquarters and offices in the City of Jacksonville, Florida.

II. That the defendants are common carriers engaged in the transportation of passengers and property by continuous carriage or shipment, wholly by railroad, between points in the State of Florida and points in the states of New York, New Jersey, Delaware, Pennsylvania, Massachusetts, Connecticut, Rhode Island, Maine, New Hampshire, Vermont, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Kansas, Oklahoma, Nebraska, Texas, Maryland. Virginia, West Virginia, Tennessee, Mississippi, Kentucky, Alabama, Louisiana, Arkansas, Georgia, North and South Carolina, Colorado, Washington, Oregon, and the District of Columbia and Dominion of Canada, and between points in Florida and points in other States along the lines of said defendants, and as such common carriers are subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III. That citrus fruits, peaches, pineapples, straw-
9 berries, tomatoes, lettuce, cabbage, potatoes, celery and all other fruits and vegetables not otherwise specified, grown in Florida, when shipped to points in other states named in paragraph II *supra*, come into competition in those markets with similar products from California. Mississippi, Alabama, Texas, Georgia, North and South Carolina and other States, and Cuba, Porto Rico, Jamaica and other countries, and the rates charged by defendants for the transportation and refrig-

eration of said products from points in Florida to points in other States are in all cases relatively and in many instances actually in excess of the rates charged and received for the transportation and refrigeration of the same kind of fruits and vegetables from points in California, Missisippi, Alabama, Texas, Georgia, North and South Carolina, and other States, and Cuba, Porto Rico, Jamaica and other countries to the same points in other States and in the District of Columbia and Dominion of Canada, and that by reason of the unreasonable, unjust and discriminatory rates exacted by defendants for the transportation and refrigeration of said fruits and vegetables grown in Florida and transported by said carriers from points in that State to points in other states, the same cannot successfully compete with fruits and vegetables of the same kinds grown in California, Mississippi, Alabama, Texas, Georgia, North and South Carolina, Cuba, Jamaica, Porto Rico and other States and countries aforesaid.

IV. That defendant's rates as now applied to the through transportation of oranges and other citrus fruits and pineapples from Jacksonville, High Springs, Gainesville and Yulee, in the State of Florida, to points in States lying north of the Ohio River, whether such shipments move originally from said Jacksonville or other so-called Florida basing points or originate at points beyond, are made up of factors consisting of the local rate of 46 cents per box of 80 pounds in effect from said Florida points to Cincinnati, Louisville and other so-called Ohio River crossings, and thence to ultimate destinations of the rates ordinarily applied on articles classified under the so-called Official Classification to take third-class rates; that each of said factors used in constructing said rates to points in territory north of the Ohio River are unreasonable and unjust, hence the rates exacted on said through traffic from said points of origin to said ultimate destinations under the present adjustment are unreasonable and unjust and should be superseded by such joint through rates as in the opinion of the Commision may appear reasonable and proper.

V. That the rates of transporation now charged by said defendants on citrus fruits and pineapples shipped from said Jacksonville, High Springs Gainesville and Yulee, proper, or when from beyond, to points in other States shown in paragraph II, supra., are as follows:

Rates on oranges, lemons, limes, grapefruit and pineapples in cents per box or crate weighing 80 pounds, when shipped from Jacksonville, High Springs, Gainesville or Yulee, proper, or when from beyond.

To	C. L.				
Chicago, Ill.	59.6				
Indianapolis, Ind.	56				
Cleveland, Ohio	58.8				
Milwaukee, Wis.	62				
Rochester, N. Y.	53				
Portland, Me.	55				
11 Cincinnati, Ohio	46				
St. Louis, Mo.	54				
Fort Smith, Ark.	66	oranges;	70	on	pineapples
Little Rock, Ark.	56	oranges;	60	on	pineapples
Columbus, Ohio	56				
Minneapolis, Minn.	77.2				
St. Paul, Minn	77.2				
Cairo, Ill.	50				
Jeffersonville, Ind.	49				
Denver, Colo.	100				
Kansas City, Mo.	71.6	oranges;	78	on	pineapples

	From beyond		Proper	
	C. L.	L. C. L.	C. L.	L. C. L.
Jersey City, N. J.	46	50.5	50.5	50.5
Atlantic City, N. J. (W. J. & S.)	51	61	55.5	65.5
Atlantic City, N. J. (A. C. R. R.)	53	63	17.5	67.5
Wilmington, Del.	44	54x	48.5	58.5x
Harrisburg, Pa.	48	58x	52.5	62.5x
Hartford, Conn.	55	65x	59.5	69.5x
New Haven, Conn.	55	65x	59.5	69.5x
Providence, R. I.	51	59	55.5	59
Newport, R. I.	55	65x	59.5	69.5x
Concord, N. H.	55	65x	59.5	69.5x
Springfield, Mass.	55	65x	59.5	69.5x
Syracuse, N. Y.	53	63x	57.5	67.5x
Albany, N. Y.	53	63x	57.5	67.5x
Ithaca, N. Y.	53	63x	57.5	67.5x
Rutland, Vt.	53	65x	59.5	69.5x
Louisville, Ky.	46	70	46	70
Richmond, Va.	42.5	42.5	42.5	42.5
Wheeling, W. Va.	59.2	68.7	59.2	68.7
Columbia, S. C.	35	35	35	35.
Evansville, Ind.	48	72	48	72
Terre Haute, Ind.	56	87.6	56	87.6
Des Moines, Ohio	76.4	130	76.4	130
12 Cedar Rapids, Iowa	72.8	130	72.8	130
Omaha, Nebr.	79.6	125.6	79.6	125.6
Atchison, Kas.	71.6	124	71.6	124
Topeka, Kas.	93.2	147.2	93.2	147.2

Detroit, Mich.	59.2	96.4	59.2	96.4
Fort Worth, Tex.	a89 pineapples; 77.6 per crate on oranges.		a89 pineapples	
Dallas, Tex.	a89 pineapples; 77.6 per crate on oranges.		a89 pineapples	
Oklahoma City	a89		a89	
New Orleans, La.	30	42	30	42
Shreveport, La.	50	90	50	90
Knoxville, Tenn. (oranges)	35		35	
Memphis, Tenn.	pineapples 39 cents			
	42	60	42	60
Chattanooga, Tenn.	35	50	35	50
Jackson, Miss.	42	60	42	60
New Albany, Ind.	49	74	49	74
Seattle, Wash. (oranges)	a162.5x		a162.5x	
Portland, Ore. (oranges)	a162.5x		a162.5x	
Winnepeg, Can.	117.2		117.2	
Regina, Can.	170.8		170.8	
Montreal, Can.	71.9		71.9	
Calgary, Can.	207		207	
Vickskburg, Miss.	42	60	42	60
Birminghan, Ala.	28	40	28	40
Montgomery, Ala.	28	40	28	40
Atlanta, Ga.	28	40	28	40
Asheville, N. C.	53	67	53	67
Charlotte, N. C.	50	53	50	53
Raleigh, N. C.	53	69	53	69

Note.—(x) Rates on pineapples 10 cents per crate higher. (a) Per 100 pounds.

13 VI. That the rates of transportation now charged by said defendants on tomatoes, cabbage, potatoes and vegetables not otherwise specified, shipped from said Jacksonville, High Springs, Gainesville and Yulee, proper, or when from beyond, to points in other States shown in paragraph II, *supra*, are as follows:

Rates on vegetables not otherwise specified in cents per bushel crate, estimated weight 50 pounds, when shipped from Jacksonville, High Springs, Gainesville or Yulee, proper, or when from beyond, carloads, and less than carloads,

To	C. L.	L. C. L.
Harrisburg, Pennsylvania	46	46
Syracuse, New York	57	57
Albany, New York	57	57

Ithaca, New York	57	57
Louisville, Kentucky	25	43
Richmond, Virginia	37	
Wheeling, West Virginia	31¾	56
Columbia, South Carolina	30½	30½
Evansville, Indiana	27	45
Terre Haute, Indiana	31	51½
Des Moines, Ohio	117a	156a
Omaha, Nebraska	35½	82
Atchison, Kansas	34	81
Detroit, Michigan	33¼	55½
Asheville, North Carolina	41	41
Charlotte, North Carolina	37	37
Raleigh, North Carolina	37	37
Seattle, Washington	175	
Portland, Oregon	175	
Calgary, Canada	67½	

(a) Per 100 pounds.

14 Rates on potatoes in cents per barrel of 185 pounds, when shipped from Jacksonville, High Springs, Gainesville or Yulee, proper, or when from beyond,

To	C.L.
Washington, D. C.	80
Baltimore, Md.	80
Philadelphia, Pa.	82
New York, N. Y.	86
Boston, Mass. (from Florida basing points proper)	106
Boston, Mass. (when from beyond Florida basing points)	98
Jersey City, New Jersey	86
Harrisburg, Pennsylvania	91
Hartford, Connecticut	106
New Haven, Connecticut	106
Providence, Rhode Island	98
Concord, New Hampshire	106
Springfield, Massachusetts	106
Syracuse, New York	101
Albany, New York	101
Ithaca, New York	101
Wheeling, West Virginia	63.5

Rates on cabbage in cents per barrel or barrel crate of 120 pounds, when shipped from Jacksonville, High Springs, Gainesville or Yulee, proper, or when from beyond,

To	C.L.	L.C.L.
Jersey City, New Jersey	77	86
Atlantic City, New Jersey	77	86
Harrisburg, Pennsylvania	82	91
Hartford, Connecticut	95	106
Syracuse, New York	94	101
Louisville, Kentucky	42a	72a
Wheeling ,West Virginia	61.4	
15 Columbia, South Carolina	60	
Asheville, North Carolina	60	
Charlotte, North Carolina	60	
Raleigh, North Carolina	60	
Boston, Massachusetts	95	106

(a) Per 100 pounds.

Rates on tomatoes in cents per standard barrel or barrel crate, estimated weight 180 pounds, from Jacksonville, High Springs, Gainesville or Yulee, proper, or when from beyond,

To	Carloads
Washington, D. C.	80
Baltimore, Maryland	80
Philadelphia, Pennsylvania	82
New York, New York	86
Boston, Mass. (from Florida basing points)	106
Boston, Mass. (when from beyond Florida basing points)	98
Jersey City, N. J.	86
Harrisburg, Pa.	91
Hartford, Conn.	106
New Haven, Conn.	106
Providence, R. I.	98
Concord, N. H.	106
Springfield, Mass.	106
Syracuse, N. Y.	101
Albany, N. Y.	101
Ithaca, N. Y.	101
Wheeling, W. Va.	63½

Ft. Worth and other Texas common points, 73 per 100 pounds.

Winnipeg, Can., 48c. per crate of 50 pounds.

VII. That the rate on vegetables not otherwise specified from Jacksonville, High Springs, Gainesville and Yulee,
16 Florida, to Baltimore, Md., is 40 cents; to Philadelphia, Pa., 41 cents; to New York, N. Y., 43 cents, and to Boston, Mass., 49 cents per crate of 50 pounds, whether such shipments are made in carload or less than carload lots; whereas

it is the almost universal practice of transportation companies by railroad to accord lower rates on shipments in carload quantities, and the volume of vegetable traffic from producing points in Florida being ample to justify such lower carload rates to all points, the present rates as applied on said carload shipments are unreasonable and unjust and the reasonable and just rates which should be applied on such shipments of vegetables in carloads would be 33 cents per crate of 50 pounds from Jacksonville, High Springs, Gainesville and Yulee to Baltimore; 34 cents to Philadelphia; 36 cents to New York, and 42 cents to Boston, with corresponding rates to interior points, based on a minimum carload of 18,000 pounds.

VIII. That the said defendant, the Atlantic Coast Line Railroad Company, has filed a tariff in which there is the following provision:

> "Refer to tariff and amendments and be advised that on mixed car loads of oranges, lemons, limes and grape fruit (See I. C. C. No. A-144 and supplement thereto or re-issue thereof), pineapples (see I. C. C. No. 4859 and supplements thereto or re-issue thereof), and vegetables, will be charged at the car load rate, applying on the highest rated commodity in the car, and at the car load minimum of twenty-four thousand pounds."

And the defendant, the Seaboard Air Line Railway Company, has filed tariff with a similar provision.

Complainant charges that this provision as to mixed car load shipments and the rates applicable thereto, are unjust and unreasonable and that reasonable rates and rules as to
17 mixed car load shipments of fruits and vegetables are essential to the development of this industry and the extension of markets of consumption, and as complainant avers and believes, would greatly increase the volume of this traffic and hence the revenues accruing to the carriers participating in the same.

Complainant avers and charges that the following would be a fair rule as to mixed car load shipments of fruits and vegetables, to wit:

> "Fruits and vegetables as specified in tariff, in mixed car loads from one consignor to one consignee, the car load rate applicable on each commodity will apply. When shipped under ventilation, car load minimum to be twenty-four thousand pounds, and when under refrigeration, car load minimum to be seventeen thousand five hundred pounds. The deficit will be charged for at the car load rate on the highest rated article in the car."

And complainant asks that this rule, or a rule to this effect, be established as to mixed car load shipments of fruits and vegetables.

IX. Complainant further shows that the rates filed and published by defendants for the consolidation of shipments of fruits, vegetables and pineapples at South Jacksonville and Jacksonville are unjust and unreasonable; and this Commission is asked to establish such rates for the service and rules and regulations governing the same as may be just and reasonable.

X. That, by reason of the premises, defendants have been and still are subjecting said growers and shippers of fruits and vegetables over defendants' lines of railroad to the payment of unjust and unreasonable rates of transportation, as above set forth, and have been and still are subjecting such growers and shippers, their traffic and said points in the State of Florida to unjust discrimination and to undue and unreasonable prejudice and disadvantage, in violation of the act to regulate commerce as amended, and more particularly sections 1, 3 and 15 thereof.

18

Wherefore, complainant prays that defendants be required to promptly answer the charges herein; that after due hearing and investigation an order be made, commanding said defendants to wholly cease and desist from the aforesaid violations of law; that the Commission prescribe reasonable and just rules or regulations and maximum rates to be observed in the future for the transportation of said fruits and vegetables from points in Florida to said points in other States over the lines of the defendant carriers; that maximum carload rates as prayed for in paragraph VII and reasonable rules to be applied in the transportation of mixed shipments of fruits and vegetables, as prayed for in paragraph VIII. be established; that proper carload minima be prescribed; that reasonable refrigeration rates and rules be established, and that such other and further order be made as the Commission may deem necessary in the premises.

Dated at Washington, this 2nd day of June, A. D. 1909.

FLORIDA FRUIT AND VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION.
By WILLIAM A. GLASGOW, JR.,
Attorney.

WILLIAM A. GLASGOW, JR., *Attorney*,
415 Real Estate Trust Building,
Philadelphia, Pa.
CHARLES D. DRAYTON, *of Counsel*,
801 Colorado Building,
Washington, D. C.

INTERSTATE COMMERCE COMMISSION.

No. 2566.

Florida Fruit & Vegetable Shippers' Association,

vs.

Florida East Coast Railway Company, et al.

Filed July 6, 1909.

And now comes the Florida East Coast Railway Company by J. P. Beckwith, its Vice-President, and for answer to complainant's petition says that it is a corporation duly organized and existing under the laws of the State of Florida and that its line of railroad lies wholly within the State of Florida.

I. And for answer to the first clause of the complainant's petition this respondent neither denies nor admits the allegation contained in said clause.

II. And for an answer to the second clause in complainant's petition this respondent says that it is not engaged in the transportation of passengers and property by continuous carriage or shipment, wholly by railroad, between points in the State of Florida and points in the other States mentioned in said clause; that its line of railroad is exclusively within the State of Florida and that it only transports passengers and property to the terminus of its road at Jacksonville, Florida, where all freights transported by it and designed for points North of Jacksonville and other States are delivered to the connecting lines; and, as such common carrier is not subject to the provisions of
2 the Act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto, in regard to the matters and things set forth in the petition.

III. And for an answer to the third clause in complainant's petition this respondent says that it has nothing to do with the making of rates from Cuba, Porto Rico, Jamaica and other countries to the United States in connection with said lines; that such rates are made by the steamship lines from the ports of the islands named to the ports of the United States; that this respondent does not ship over its roads any of the products named except from the island of Cuba, the rates from which are controlled and made by the steamship lines running from said

island to Mobile and New Orleans, the same rates being of necessity accepted and published by this Company; that in every instance these products are usually delivered to this respondent at Knight's Key by trainload lots at the expense of the shipper, who has to pay for their transportation to the railroad lines in Cuba, from thence to Havana, and from Havana to Knight's Key; that the expense of loading the cars at Knight's Key is shared by the steamship line with this respondent and that the proportion of the through rate from Knight's Key to points West received by this respondent is barely sufficient to cover the cost of transportation; that the fruit and vegetables shipped from points in Florida on the line of this respondent's road possess large and substantial advantage over the fruit and vegetables shipped from Cuba; that this respondent has supplied the growers of fruit and vegetables with numerous side tracks and spurs running through or beside their groves and farms; that in many instances the packing houses of the Florida shippers are located directly on such side tracks and spurs
3 and the products packed in such packing houses and loaded directly into the cars which are placed by this respondent in front of said packing houses, thereby saving the grower the cost and expense of packing his fruit and vegetables on the farm and hauling them to a railroad station.

This respondent further says that, during the shipping season, this respondent, at its own expense and without extra charge to the shipper, has a special freight train sent with empty cars from Fort Pierce to Stewart, distributes the cars at the numerous stations and returning gathers up all the fruit and vegetables that have been packed up to the hour of the arrival of such train; that this freight is carried to Fort Pierce, where, at the expense of this respondent, later in the day the regular freight train leaves Miami and takes up all the remaining fruit packed up to the hour of arrival and when the train is made up at Fort Pierce it proceeds from there at a high rate of speed to Jacksonville, such train arriving in Jacksonville the following morning. And this respondent says that the facilities afforded the shippers in Florida in these particulars furnish another advantage over the Cuban shipper; that, in addition thereto, the Cuban shipper has to pay a tariff of 14c per crate; that the saving to the Florida shipper of the extra expense of the Cuban shipper by reason of the unusual facilities afforded by this respondent and the tariff added, makes the rate from Jensen on this respondent's road, and the center of the great mass of pineapple shipments, to points in the West equal to, and in many instances less than, the rates charged over this respondent's road to such points in the West; that, in a few

instances the rate is larger, but this respondent carries but little or no vegetables to such points. And this respond-
4 ent says that the rates charged to the Florida shipper by the Florida East Coast Railway Company are not unreasonable and unjust and are not discriminatory; that the rates allowed by the Florida Railroad Commissioners to this respondent for carrying fruit and vegetables from points on its line to Jacksonville are reasonable and just; that this respondent, by reason of the low rate for passengers authorized by said Commissioners, and the general low rate for freights established by said Commissioners has not for years been able to pay its operating expenses and fixed charges, taxes and insurance; that it has recently been compelled to re-arrange its finances, reduce the interest on its bonded indebtedness, and, in place of the $16,000,000 of 5% bonds, has issued $12,000,000 of 4½% bonds and further issued $25,000 000 of mortgage income bonds, the interest on the latter not to exceed 5% and dependent upon any excess of earnings after the interest on the first mortgage bonds, taxes, insurance, amount set aside for depreciation and other extraordinary expenses are paid. And this respondent says that it is still a problem whether or not, even with these reduced fixed charges this respondent's earnings will enable it to meet its fixed liabilities.

The comparison of rates on pineapples from Cuba and from Florida to the points named in the Exhibit is based on the rate from Jensen, Florida, which point is the center of the great mass of pineapples grown in the State of Florida, the production of pineapples South of this territory being at present comparatively small.

And this respondent further answering says that there is no method by which this respondent can enable the shippers of Florida to transport their fruits and vegetables from points on this respondent's road for any sum materially less than
5 the rates charged by steamship lines; that this respondent carries no freight from Cuba to Eastern points, it being impossible to compete with the rates charged by the steamship lines to Eastern ports.

And this respondent further says and repeats that the through rates established from Cuba by way of this respondent's road were and are the rates established by the steamship lines running to Mobile and New Orleans from Cuban ports to points West and that, if this respondent should demand a higher rate, it could not get the freight at all and its refusal or failure to carry such freight would not prevent the fruit and vegetables from Cuba reaching the Western markets via New Orleans and Mobile but would utterly deprive this respondent of making a small profit by transporting these train loads of fruit and vege-

tables delivered to it by the shippers at Knight's Key and thereby further impair the ability of this respondent to meet and pay its ordinary operating expenses, insurance, taxes, extraordinary expenses and fixed charges, and it would tend directly to the injury of the shippers of fruit and vegetables on the line of this respondent's road by requiring an increase on the rate from points on this respondent's road to Jacksonville.

IV. In answer to the fourth clause of complainant's petition this respondent says that it is not a party to and does not make the rates on fruit, vegetables and pineapples from Jacksonville, High Springs, Gainesville and Yulee to points in States lying North of the Ohio River; that its line of railroad does not go to High Springs, Gainesville or Yulee; that it does not
6 transport any freight North of Jacksonville; that it receives the rates authorized from points on its road to Jacksonville, at which point it transfers said freight to the connecting interstate line of railroad.

V. And in answer to the fifth clause of complainant's petition this respondent repeats all the allegations contained in the answer to the fourth clause.

VI. And in answer to the sixth clause in complainant's petition relating to transportation charges on tomatoes, cabbage potatoes and vegetables not otherwise specified, shipped from Jacksonville, High Springs, Gainesville and Yulee, this respondent repeats all and singular the answers contained herein to clauses four and five of complainant's petition.

VII. And in answer to the seventh clause in complainant's petition this respondent repeats all the matters and things contained in the answer to the fourth, fifth and sixth clauses of complainant's petition.

VIII. And in answer to the eighth clause in complainant's petition this respondent says that the terminus of its road is at Jacksonville in the State of Florida; that it does not make rates North of Jacksonville or outside of the State, but that such rates are made by the interstate lines and the rates of this respondent are added on the delivery of the fruit, vegetables and pineapples to the connecting roads at Jacksonville.

And in further answer to the eighth clause in com-
7 plainant's petition this respondent says that the rates filed and published for the consolidation and shipment of fruit, vegetables and pineapples at South Jacksonville and Jacksonville are reasonable and just so far as this respondent is concerned; that this respondent is not a party to the tariff referred to as being filed by the Atlantic Coast Line Railroad

Company and the Seaboard Air Line Railway. And this respondent further says that, under and by virtue of its tariff, the following provision is made:

> "Pineapples, oranges and vegetables in mixed carloads from one consignor to one consignee, the carload rate applicable on each commodity will apply. If aggregate weight is less than 24,000 lbs., the deficit will be charged for at carload rate on the highest rated article in the car."

And this respondent says that this application of the mixed carload on pineapples, oranges and vegetables was made to care for this class of traffic moving in large volumes from points on the line of the Florida East Coast Railway, and has been acceptable to all the shippers on said line of road.

IX. And in answer to the ninth clause in complainant's petition this respondent says that on shipments that are consigned to Jacksonville and South Jacksonville local for re-shipment and shipped with the shipments to South Jacksonville, this respondent had established a local rate from South Jacksonville to be added to the rates named in the tariff to establish the through rate. These rates being considered too high and as not permitting of shipments being made to South Jacksonville to be consolidated and reconsigned, this respondent reduced these rates from 10c per crate on pineapples and oranges; 16c per bbl. on potatoes; 8c per crate on tomatoes and 10c on egg-
8 plant and squash when packed in orange boxes, and 8c on vegetables, to the following figures:

Oranges, Limes, Grapefruit	3 cents
Pineappples	3 cents
Potatoes	4c bbl.
Tomatoes	2c crate
Eggplant and squash in oranges boxes	3 cents
Vegetables	2c crate

And this respondent says that the foregoing rates were and are very low and but little more than the cost of rehandling shipments consigned to South Jacksonville and then consigned to points North of Jacksonville.

And this respondent further says that said rates are not unreasonable and unjust but are just and reasonable.

X. And in answer to the tenth clause in complainant's petition this respondent denies that the growers and shippers of fruit and vegetables over this respondent's line of road are subject to the payment of unjust and unreasonable rates of transportation so far as this respondent is concerned, or are subject to any unjust discrimination or to undue and unreasonable pre-

judice and disadvantage, in violation of the act to regulate commerce as amended, and more particularly sections 1, 3 and 15 thereof; that this respondent is primarily interested in the welfare and success of the growers of fruit and vegetables on its line of road and that it has not done anything and will not do anything to their prejudice.

And this respondent says that the rates allowed by the Florida Railroad Commissioners to this respondent's road are not unjust and not unreasonable, but are, in fact, in many schedules too low; that this respondent has always endeavored to foster and encourage the growers of fruit and vegetables on
9 its line of road; that this respondent is utterly without power to control, fix or regulate the rates established by the steamship lines from Cuban ports; that it is unreasonable and unjust for the Florida Fruit & Vegetable Shippers' Association to require or demand that this respondent should refuse to carry through freight delivered to it at Knight's Key in trainload lots sent by a single consignor to a single consignee at one point; that when these train loads are made up they are carried to Jacksonville at the minimum cost involving no stops at points in many instances within half a mile of each other, but are strictly through trains, saving cost of coal, labor and time; that this respondent is not violating any law of Congress, but has always strictly complied with the laws of Congress.

The premises considered, this respondent prays that the petition of complainant may be dismissed so far as this respondent is concerned with costs to the complainant.

FLORIDA EAST COAST RAILWAY COMPANY.
By (Signed) J. P. BECKWITH,
Vice-President.

(Signed) ALEX ST. CLAIR-ABRAMS,
Attorney and Solicitor for Florida East Coast Railway Company.

State of Florida,
County of Duval.

Personally appeared before me J. P. Beckwith, who being duly sworn, says that he is Vice-President of the Florida East Coast Railway Company; that he has read the foregoing answer and that the matters and things stated therein are true to the best of his knowledge and belief.

Sworn to and subscribed before me
this 30th day of June, 1909.

(Signed) J. P. BECKWITH.

(Signed) LON BECCA PINNELL,
Notary Public State at Large.
My commission expires Sept. 13, 1910.

Petitioners' Exhibit No. 24. Docket No. 1168 and 2566. Testimony taken before Commissioner Prouty at Jacksonville, Fla., Dec. 20 and 21, 1909.

[Not printed; by permission of the Court.]

Jacksonville, Fla., Jan. 7th, 1910.

EDWARD A. MOSELEY, ESQ., *Secretary,*
Interstate Commerce Commission,
Washington, D. C.

Dear Sir:

A copy of the testimony taken at Jacksonville on the 20th of December was not received by me until last Tuesday. It is of course impossible for me to prepare and have printed a Brief for the Florida East Coast Railway Company in time to file it by the 12th inst. When this date was fixed Mr. Prouty announced that if the Brief could not be filed by that date that, on application, time would be extended. I therefore respectfully ask that an extension of time to the 26th of January be granted in which to file the Brief of the Florida East Coast Railway Company as that is the least time in which I can have the Brief prepared, printed and filed with you. I inclose a formal motion.

Awaiting your reply, I am,

Very truly yours,

G. (Signed) ALEX. ST. CLAIR-ABRAMS.

INTERSTATE COMMERCE COMMISSION.
Washington.

"Petitioner's Exhibit 4"

January 13, 1910.

A. ST. CLAIR-ABRAMS, ESQ.,
Attorney, Florida East Coast Railway,
Jacksonville, Fla.

Dear Sir:

Upon the argument of the Florida Fruit & Vegetable case yesterday, the Commission was strongly impressed with the critical condition of the pineapple industry and the disadvantage under which it labors in the matter of freight rates. So strong was this feeling that we voted to further consider the reasonableness of rates on fruits and vegetables from points upon your line to Jacksonville with special reference to pineapples. I do not think that testimony will be received upon any other point than this.

The case has been assigned for final hearing at Washington, on February 3 at which time the parties will be allowed to introduce further testimony, be heard in argument and permitted to file briefs. The order will be served upon your company at once, but I write you in advance so that you may be prepared for the hearing above indicated.

Truly yours,

(Signed) C. A. PROUTY,
Commissioner.

"Petitioner's Exhibit 5"

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of January, A. D., 1910.

Present:

MARTIN A. KNAPP,
JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANCIS M. COCKRELL,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,
Commissioners.

No. 1168.

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

In the above case,

IT IS ORDERED, That the decision of the Commission holding rates on fruits and vegetables from points on the Florida East Coast Railway to Jacksonville when for beyond to points in other states reasonable, be rescinded and that the reasonableness of those rates be further considered by the Commission.

IT IS FURTHER ORDERED, That the case be set down for final hearing upon this branch of the office of the Commission in Washington, at 10 o'clock in the forenoon on Thursday, February 3, 1910, at which time and place the parties will be given leave to introduce upon this subject, having special reference however to rates upon pineapples, additional testimony, will be heard in argument and allowed to file briefs.

IT IS FURTHER ORDERED, That a copy of this order to served upon the parties to this case.

A true copy.

(Signed) EDW. A. MOSELEY,
Secretary.

[Seal of Interstate Commerce Commission]

INTERSTATE COMMERCE COMMISSION

Filed January 25, 1910.

1168

Florida Fruit & Vegetable Shippers' Protective Association,

vs.

Florida East Coast Railway Company et als.

2566

Florida Fruit & Vegetable Shippers' Protective Association,

vs.

Florida East Coast Railway Company et als

And now comes the defendant, the Florida East Coast Railway Company, by Alex. St. Clair-Abrams, its attorney, and enters its objection to the action of the Interstate Commerce Commission in rescinding its decision so far as this Company is concerned in the case as originally presented on the following grounds:

1. Because the supplemental complaint did not seek nor ask any change in the rates on pine apples or vegetables from points on the Florida East Coast Railroad to Jacksonville, Florida.

2. Because the complainant, by and through its counsel, Mr. Glasgow, in the presence of Commissioner Prouty, declared that the complainant was not at that time attacking the rates of the Florida East Coast Railway Company up to Jacksonville, Florida, under the supplemental petition.

3. Because no application has ever been made to the Interstate Commerce Commission for a re-hearing or re-consideration of its decision in favor of the Florida East Coast Railway Company on the original case so far as this defendant is advised.

4. Because the matter of the rates of the Florida East Coast Railroad for pine apples and vegetables from points on the line of its road to Jacksonville, Florida was *res adjudicata* when the supplemental petition or complaint was filed.

5. Because, as shown by evidence in the original case, the Florida East Coast Railway Company does not make any

through rates from points on the line of its road to Jacksonville or north of Jacksonville, Florida.

6. Because the Florida East Coast Railway Company charges only its local rates from points on its line of road to Jacksonville, such rates being authorized by the State Railroad Commission of Florida.

7. Because the Interstate Commerce Commission is without authority of law to fix the local rate on fruits and vegetables, including pine apples, from points on the line of its road to Jacksonville, Florida.

8. Because, in issuing through bills of lading from points on the line of its road to points North and West of Jacksonville, Florida, the Florida East Coast Railway Company acts solely as the agent of the shipper by adding on the rate charged from Jacksonville to points of ultimate destination.

9. Because, as shown by the testimony in the original case, the Florida East Coast Railway Company does not make any through rates in connection with any line of road doing an interstate business to points beyond the terminus of its
3 road at Jacksonville, Florida, but charges its local rate authorized by the State Railroad Commission and adds thereto the rate charged by the interstate railroads to points of destination.

10. Because the Interstate Commerce Commission is without authority of law to determine whether or not the local rate from points on the line of the Florida East Coast Railroad to Jacksonville, Florida, are reasonable or unreasonable, there being no through rate from points on the line of the Florida East Coast Railroad to any points beyond the State of Florida.

11. Because the Florida East Coast Railway Company, in adding to the local or interstate rate allowed by the Florida Railroad Commission the rate fixed from Jacksonville on interstate shipments acts solely for the accommodation of shippers on the line of defendant's road.

(Signed) ALEX ST. CLAIR-ABRAMS,
Attorney for Florida East Coast Railway Company.
(Signed) FRED'K C. BRYAN, 701 Colo. Bldg.,
Of Counsel for Fla. E. C. Ry. Co.

Jacksonville, Fla., Jan. 18th, 1910.

HON. CHAS. A. PROUTY,
Interstate Commerce Commission,
Washington, D. C.

DEAR SIR:

I have this day forwarded to Frederick C. Bryan, Esq., who is associated with me for the Florida East Coast Railway, formal objections to the action of the Commission in rescinding its decision rendered last June on the grounds stated in the objections. Subject to those objections, I have also forwarded Motion asking the Commission to extend the time for the final hearing in this case so as to enable the Florida East Coast Railway to prepare the evidence necessary to be submitted on the new aspect of the situation. Accompanying this Motion is an affidavit from Mr. J. R. Parrott, President of the Florida East Coast Railway.

I think it due to the Company to call your attention further to the fact that the claims of the Florida Fruit & Vegetable Shippers' Protective Association are largely based on the claim that the rates from Knight's Key to certain points west, on Cuban pineapples. are less than they are from Homestead and other points on the line of the Florida East Coast Railway to the same points west. In making this claim they have entirely omitted the expense to the Cuban shipper from the gathering points to Havana but only included lighterage in Havana harbor. Our advices are that the great mass of the Cuban pineapple crop comes from the railroads at varying distances from Havana to Havana and that many of the pineapple plantations on that island are miles away from the delivery stations on the lines of the railroads. Of course it is necessary for us to verify this information and also to ascertain approximately the additional expense to the Cuban shipper not considered in any evidence submitted by the Florida Fruit & Vegetable Shippers' Protective Association and which materially affects the situation.

C.A.P.—2

It is also necessary for us to go over the records of the Florida East Coast Railway showing the shipments of pineapples from points along the line of its road to Jacksonville. I consider this very essential as I am informed that probably 90 per cent. of the Florida pineapple crop is shipped from Boynton north to a point in the neighborhood of Fort Pierce and that there is but a very small fraction shipped from Homestead to Boynton.

Unless we are allowed time to go over the entire records we will be unable to submit to the Commission the evidence necessary to sustain our contention.

Again, I beg to call your attention to another matter that requires time. It is essential that we shall show the Commis-

sion that every year the average price of Cuban pineapples has been considerably less in the different markets of
C.A.P.—3 the West and East than the price paid for Florida pineapples. and also to show that last .year the sharp competition between the two arose from the fact that the Florida pineapple crop was unusually early and the Cuban pineapple crop unusually late, which brought about a competition that does not usually exist.

Furthermore it is necessary for us to put in evidence showing the revenue the road has derived for several years from pineapples and vegetables separately. We could. in a short time. give the aggregate revenue derived from vegetables. pineapples, oranges, and other fruits, but it seems to me essential that the Commission should be advised of the revenue obtained from pineapples alone.

Furthermore, it is essential that we shall submit to the Commission the existing financial condition of the Florida East Coast Railway at this time and show that it has not changed materially for the better since the Commission rendered its decision.

I voice the feelings of the Company when I say that there is not the slightest desire on our part to delay a determination of the questions raised by the Commission. If the Commission extends the time it can have the final hearing and render its decision before the Florida pineapples will be ready for shipment.

It is true that the damage done by the recent
C.A.P.—4 cold weather in Florida will greatly reduce the number of crates to be shipped from Florida this year, and this fact should be put in evidence for the consideration of the Commission.

Will you kindly advise me of the determination of the Commission on the Motion to extend the time?

I received your letter on Saturday evening last and on Monday morning instituted proceedings to obtain the testimony needed. All of the officers of the Company unite in the opinion that the testimony cannot be secured in time for use by the third of February.

In view of the fact that an extension of time cannot in any way affect the shippers of pineapples for the coming season, I trust that this application for extension of time will be granted.

It is true that the Order of the Commission says that "The parties will be given leave to introduce upon this subject, having special reference however to rates upon pineapples, additional testimony." Of course I take it for granted that we will be permitted to offer evidence showing not only the true cost to the Cuban grower of shipping pineapples to the United States but also the present financial condition of the road, the

fact that it pays no dividends whatever on its stock although the stock was bought at 100 per cent. on the dollar, and that its bonds only bear 4 per cent. and 4½ per cent. interest, and that there has been spent up to the present time, $33.-
C.A.P.—5 000,000.00 on this property with $30,000,000.00 of bonds outstanding, and that the net earnings of the road at this time are insufficient to pay its expenses and these charges are not likely to do so for the fiscal year ending June 30th, 1910.

Very truly yours,

G. (Signed) ALEX. ST. CLAIR-ABRAMS,

Jacksonville, Fla., Jan. 20th, 1910.

HON. CHAS. A. PROUTY,

Interstate Commerce Commission,

Washington, D. C.

DEAR SIR:

Referring to the matter of the order of the Interstate Commerce Commission rescinding its decision made last June, I beg to submit this question for the consideration of the Commission: While it may be as intimated by you during the proceedings at Jacksonville on December 20th and 21st, that the Commission does not consider itself a Court, I think, nevertheless, you will admit that it at least constitutes a Board of Arbitration between the shipper and the Railroad Company. Now, after a full and exhaustive hearing, when the Commission has made an award it does seem to me that this award should not be disturbed by any action on the part of the Commission *sua sponte* but that a new complaint should be filed setting forth changed or different conditions than existed or were presented on the same question at the former hearing. At least there should be some action on the part of the complainants asking a re-hearing of the decision or award within a reasonable time, say sixty days. In this case the award or decision of the Commission was made in June, 1909, and in January, 1910 your Commission rescinded that decision.

It may not be improper here for me to say that I have always been a strong supporter of the Interstate Commerce Commission but I think you will admit it places the Railroad Companies in a very embarrassing position when decisions rendered more t han six months before can be rescinded and annulled without some new complaint setting forth the changed conditions which exist and calling for the opening not of the old case but of a new one. They are unable to determine whether or not a decision settles the question in dispute or whether it is subject to annullment and the re-opening of the case at any time. The absence of a final settlement of any case thereby becomes impossible and the Railroad Companies are left in great uncertainty as to what position they occupy in respect to rates.

C.A.P.—2

I beg to assure you that I do not write in any spirit of criticism or of captiousness, but the Florida East Coast Railway is confronted with this serious situation: It suddenly finds an adjudication upset in the face of a former denial by the Complainants that they were seeking to disturb our rates to Jacksonville under the existing complaint. (See page 84 of the testimony.)

Owing to the recent freeze we are confronted with a large reduction of business which will probably prevent our paying 4 per cent. interest on our income bonds; our employees are restive and demanding increased pay, and the situation of the road is becoming graver.

I repeat that I do not write this letter in any spirit of captiousness or criticism but solely to call your attention to the fact that some rules should be promulgated by the Commission which would give to both parties assurance that after a matter is determined it will not be re-opened without either an application for a re-hearing within a limited period of time or a new complaint setting forth such changed conditions as warrant a new adjudication on the particular matter.

C.A.P.—3

I am, my dear sir, with assurances of the highest personal regard for the Commission,

Very truly yours,

(Signed) ALEX. ST. CLAIR-ABRAMS.

G.

INTERSTATE COMMERCE COMMISSION

Washington, January 27, 1910.

"Petitioners' Exhibit 6"

ALEX. ST. CLAIR-ABRAMS,
Attorney, Florida East Coast Railway,
Jacksonville, Fla.

DEAR SIR:

In going through the letters which I find upon my desk this morning, several from you have come to my attention since I wrote you in answer to the first. In view of these I wish to make it clear to you that the Commission has not decided that your rates are unreasonable; in view of what seemed to be changed conditions it has simply voted to proceed further with the investigation of that question.

You can, with propriety, urge every legal objection to that course of action, and you can also urge every objection of propriety. The whole case upon that branch is open and you are concluded in no respect.

Truly yours,

(Signed) C. A. PROUTY,

Commissioner.

Opinion No. 1153

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. 1168

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL

No. 2566

SAME

vs.

ALABAMA & VICKSBURG RAILROAD CO.,

Decided February 8, 1910

Report and Order of the Commission, 17 I. C. C. Rep. 552 to 568

[Not printed; by stipulation of Counsel.]

MOTION AND PETITION TO RESCIND THE ORDER AND DECISION OF FEBRUARY 8, 1910, REDUCING THE RATES ON CITRUS FRUITS.

(April 4, 1910)

The Florida East Coast Railway Company moves the Interstate Commerce Commission to rescind the order of said Commission dated February 8, 1910, reducing the rates on citrus fruits from points of production up to base points on the following grounds:

First. That the petition of the Florida Fruit & Vegetable Shippers' Protective Association and investigation under case No. 2566 did not include citrus fruits, and that no complaints whatsoever have been made before the Interstate Commerce Commission as to the rates on citrous fruits from points of production in Florida up to base points.

Second. Because by reason of the higher prices obtained for citrous fruits produced on the line of the Florida East Coast Railway, the Florida East Coast Railway Company has always been allowed by the State Railway Commission a higher rate on citrous fruits than on pineapples.

Third. Because the order of the Interstate Commerce Commission of February 8, 1910, makes a greater reduction on the rate on citrous fruits than it does in the rate on pineapples.

Fourth. Because under the order of the Interstate Commerce Commission of February 8, 1910, the rates fixed on citrous fruits from points of production to base points involves the loss of $24,611.84 annually on citrous fruits alone.

Fifth. Because after paying taxes, insurance and other deductions, the Florida East Coast Railway Company has never yet earned 4% on the money actually invested on the line of the route.

Sixth. Because owing to the shortage of the pineapple, vegetable and orange crop during the present year the revenues of the Florida East Coast Railroad are not likely to earn 3% on the money actually invested in the road. The Florida East Coast Railway Company therefore moves and prays that the order of the Interstate Commerce Commission, dated February 8, 1910, reducing the rates on citrous fruits from points of production to base points, be rescinded and set aside.

(Signed) J. R. PARROTT,
Pres. Florida East Coast Railway Company.
(Signed) ALEX. ST. CLAIR-ABRAMS,
Attorney for the Florida East Coast Railway Company.

"Petitioner's Exhibit 8."

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 4th day of April, A. D., 1910.

Present:

MARTIN A. KNAPP,
JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANCIS M. COCKRELL,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN.
Commissioners.

No. 1168

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

v.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

ORDER MODIFYING ORDER OF FEBRUARY 8, 1910.

Upon consideration of the record in the above entitled case, it appearing that the rates on oranges and other citrus fruits between the points involved, were not specifically assailed in the complaint,

IT IS ORDERED, That the words "and citrus fruits" appearing in line ten of the body of the order on page 2, and the words "and citrus fruits" in line eighteen of the body of said order, and the words "and citrus" in line twenty-four of the body of said order, and the word "fruits" in line twenty-five thereof, be, and they are hereby, stricken out, for the purpose and with the intention of making said order apply only to the transportation of pineapples, as therein set forth.

IT IS FURTHER ORDERED, That a copy of this order be served upon counsel for the complainant herein, and upon the defendant, Florida East Coast Railway Company.

A true copy.

E. A. MOSELEY, *Secretary.*

[Seal of the Interstate Commerce Commission.]

8—2587

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 1168.

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Florida East Coast Railway Company.

Filed Nov. 16, 1910.

The Supplemental Petition of the above-named complainants respectfully shows:

1. That, to-wit, on the 8th day of February, 1910, after hearing the testimony and argument of the respective parties, this Honorable Commission made a report and entered an order in the above-numbered case and in and by its said order it adjudicated and established new and reduced rates for the transportation of citrus fruits and pineapples from points of production upon the Florida East Coast Railway to Jacksonville when for beyond—minimum carload 300 crates,

Distance (miles).	RATE. Carload. Cents.	Less than carload. Cents.
Up to 40	9	12
Over 40 and up to 60	10	13
Over 60 and up to 80	11	14
Over 80 and up to 100	12	15
Over 100 and up to 120	13	16
Over 120 and up to 140	14	17
Over 140 and up to 160	15	18
Over 160 and up to 180	16	19
Over 180 and up to 200	17	20
Over 200 and up to 220	18	21
Over 220 and up to 240	19	22
Over 240 and up to 260	20	23
Over 260 and up to 280	21	24
Over 280 and up to 300	22	25
Over 300 and up to 325	23	26
Over 325 and up to 350	24	27
Over 350 and up to 375	25	28
Over 375 and up to 400	26	29

and ordered the Florida East Coast Railway Company
2 to charge and collect rates not in excess of those specified above upon said commodities, and thereafter, the

Commission modified its said order so as to make the above schedule of rates apply only to pineapples.

And the defendant, the Florida East Coast Railway Company, has put into effect the rates so fixed by the Commission for the transportation of pineapples, but now has in effect a schedule of rates for the transportation of citrus fruits and vegetables from points of production on the said Florida East Coast Railway to Jacksonville when for beyond, which when reduced to a mileage basis, is as follows:

	Citrus Fruits. Rate.		Vegetables. Rate.	
Miles.	Carload. Cents.	Less than carload. Cents.	Carload. Cents.	Less than carload. Cents.
Up to 40	9	12	7	10
40 to 50	10	13	8	11
50 to 65	11	14	8	11
65 to 75	12	15	9	12
75 to 95	14	17	10	13
95 to 100	15	18	10	13
100 to 105	16	19	11	14
105 to 115	17	20	11	14
115 to 125	18	21	12	15
125 to 140	19	22	12	15
140 to 160	20	23	13	16
160 to 180	21	24	14	17
180 to 200	22	25	15	18
200 to 220	23	26	16	19
220 to 240	24	27	17	20
240 to 260	25	28	18	21
260 to 280	26	29	19	22
280 to 300	27	30	20	23
300 to 325	28	31	21	24
325 to 350	29	32	22	25
350 to 375	30	33	23	26
375 to 400	31	34	24	27

and petitioner alleges that the said rates are unjust and unreasonable and subject complainants to undue and unreasonable prejudice and disadvantage in violation of the Act to regulate commerce as amended, particularly Sections 1 and 3 thereof.

WHEREFORE, your petitioners pray that the de-
3 defendant be required promptly to answer the charges herein; that after investigation an order be made requiring the said defendant to put into effect rates upon citrus

fruits and vegetables in carloads and less than carloads from points of origin on the Florida East Coast to Jacksonville and for beyond not in excess of those ordered by the Commission and now in effect for pineapples, and that an order be made requiring defendant to reduce the vegetable rates from points on the Florida East Coast Railway to Jacksonville when for beyond, in equitable proportion to those prescribed by the Commission for the transportation of pineapples, and that such further order be made as the Commission may deem necessary in the premises.

Dated at Miami, Florida, this 8th day of November, 1910.

WM. A. GLASGOW, JR.

William A. Glasgow, Jr. Atty.,
Real Estate Trust Bldg.,
Philadelphia, Pa.

CHARLES D. DRAYTON.

Charles D. Drayton, of Counsel,
Colorado Building,
Washington, D. C.

HUDSON & BOGGS.

Hudson and Boggs, of Counsel,
Townley Building,
Miami, Florida.

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 1168.

Florida Fruit and Vegetable Shippers'
Protective Association

vs.

Florida East Coast Railway Company.

Motion.

Come now the complainants and pray leave of the Commission to file the appended Supplemental Petition in the above styled cause.

And complainants will ever pray.

CHARLES D. DRAYTON,
Attorney for Complainants.

WM. A. GLASGOW, JR.
HUDSON & BOGGS.
Of Counsel.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

No. 1168.

Florida Fruit and Vegetable Shippers' Protective Association,

v.

Atlantic Coast Line Railroad Company, Florida East Coast Railway Company, et als.

ANSWER OF FLORIDA EAST COAST RAILWAY COMPANY TO SUPPLEMENTAL PETITION.

Filed Dec. 13, 1910.

And now comes the Florida East Coast Railway Company by Alex. St. Clair-Abrams, its Solicitor and Attorney, and for an answer to the supplemental petition filed by the petitioners says:

1. That it is true, as set forth in said petition, that on the 8th day of February, 1910, the Commission adjudicated and established new and reduced rates for the transportation of pineapples but did not, by its Order, make any new schedule of rates on citrus fruits and vegetables.

2. And this defendant further answering says that the reduction of rates upon pineapples was made and based upon the alleged competition with Cuban pineapples and the necessity of equalizing the rates so as to enable the growers in Florida to compete with the foreign product in conformity with the purposes and policy of the law of Congress; that by reason of the reduction of rates on pineapples and the shortness
2 of the crop of the present year, this company suffered a loss of nearly $135 000 in revenue, which was only made up to the company by the large and unexpected increase in its passenger and other business. And this defendant says that, as claimed and set forth at the hearing before this honorable body, the present rate on pineapples on the line of this defendant's road is less than it should properly be and does not afford to this company a proper and adequate remuneration for the service.

3. That the rates now charged by this defendant on citrus fruits and vegetables are just and reasonable rates; that, since the action of the Interstate Commerce Commission, this

defendant has changed and equalized the rates on citrus fruits and vegetables and has made a general reduction of the rates thereon from what they were at the time of the hearing before the Interstate Commerce Commission on the pineapple rates; that this defendant submitted said rates on citrus fruits and vegetables to the Florida Railroad Commission; that said Florida Railroad Commission approved, confirmed and authorized the existing rates, which went into effect on the first day of November, 1910; that the list submitted in the supplemental petition as to the existing rates on citrus fruits and vegetables now in force and authorized by the Florida Railroad Commission is partly incorrect and partly correct but is based on a different alignment of mileage not provided by the mileage tariff of this defendant now in force. And this defendant says that the rates now in force and approved by the Florida Railroad Commission on citrus fruits and vegetables are just and reasonable, and denies the allegation of the petition that said rates are unjust and unreasonable or that they subject
3 complainants to undue and unreasonable prejudice and disadvantage in violation of the Act to regulate commerce as amended, particularly Sections 1 and 3 thereof.

4. And this defendant further answering says that it has only recently changed and amended its schedule of freight rates, making radical reductions thereof, which schedule of rates has been approved and confirmed by the Florida Railroad Commission, and that the same is just and reasonable on citrus fruits and vegetables.

5. And further answering this defendant says that since this Commission fixed a rate on pineapples it has been necessary for the Florida East Coast Railway Company, by reason of the increased cost of living to increase the compensation paid to many of its employees, thereby further increasing the expenses of operating the road; that during the month of October, 1910, a storm of great severity inflicted such damage on this defendant's main line of road between Miami and Jupiter as to force the suspension of the operation of trains between said points for several days and to impose upon this company a large expenditure of money in rebuilding and restoring the road to proper and efficient operation; that, by reason of these reductions and expenditures, this company cannot afford at this time to make further reductions, either in freight or passenger traffic, and that the condition and situation of this defendant's road are such that further reductions would be unjust and unreasonable.

6. And further answering this defendant says that,
4 although its capital stock has been purchased and paid for at par and the entire proceeds invested in the con-

struction and betterment of its road no dividend is paid thereon; that its entire outstanding bonded indebtedness is less than the present value of the road and less than the actual cost thereof; that, since the construction of said road the complainants have been enormously benefited by the enhanced valuation of their property and by the enormous reduction in the cost of transportation, both on freight and passengers, resulting from the construction of this defendant's road; that, under the laws of Florida, interest at the rate of 8 per cent per annum is authorized to be imposed and collected without contract; that the average rate of interest charged by banks and money lenders is 8 per cent and only in exceptional cases can money be obtained for as low as 7 per cent; that this defendant is entitled to earn 8 per cent per annum on the present actual value of its property; that during the fiscal year ending June 30, 1909, it earned and paid only 4 1-2 per cent on about one-third of its bonds and 3 1-2 per cent on about two-thirds and no dividend whatsoever on its stock; that its entire net earnings did not aggregate 6 per cent on the present value of its main line of road from Jacksonville to Miami with the branches, although its extension from Miami to Knights Key has greatly increased the earnings of said main line; that the entire net earnings appropriated for interest on the entire line aggregated $1,150,000.00; that the main line and its branches, including terminals, representing capital actually invested, and betterments and improvements made out of the earnings of the road for years cost over $18,000,000 and have a present value of not less than $20,000,000.00.

7. And further answering this defendant says that to impose further reductions in freight on citrus fruits and vegetables is to largely decrease the earnings of this defendant's road and to prevent its paying the small interest now paid on its bonded indebtedness, and to further prevent this defendant from properly and efficiently conducting, managing and operating its said road.

And further answering this defendant annexes hereto statements showing the decrease of revenue from pineapples for the fiscal year ending June 30, 1910, statement of interest paid on mortgage bonds, statement of present rates on citrus fruits and vegetables and other statements which the defendant prays may be taken as part of this answer.

Wherefore, for the reasons herein set forth, this defendant prays that said petition be denied; that the rates for freight charged by this defendant on citrus fruits and vegetables be

declared just and reasonable, and that this defendant be discharged with its costs.

(Signed) J. R. PARROTT,
President Florida East Coast Railway Company.

(Signed) ALEX. ST. CLAIR-ABRAMS,
Solicitor and Attorney for
Florida East Coast Railway Co.

STATE OF FLORIDA
COUNTY OF DUVAL

Personally appeared before me J. R. Parrott who, being duly sworn, says that he is the President of the Florida East Coast Railway Company; that he has read the foregoing answer to the supplemental petition herein filed, and that the matters and things stated therein are true to the best of his knowledge, information and belief.

Sworn to and subscribed before me
this 7th day of December, 1910.

(Signed) J. R. PARROTT.

(Signed) S. R. MARKS,
Notary Public State at Large.
My Commission expires April 4, 1911.

STATEMENT

Of Revenue Received from Freight on Pineapples from Points in Florida via the F. E. C. Railway, for years ending June 30th, 1909 and 1910.

CRATES		REVENUE
1,034,289	1909	$258,055.02
577,588	1910	124,956.38
Decrease of revenue from pineapples in 1910,		$133,098.64

STATEMENT

Of interest paid on bonds for the year ending June 30th. 1910.

On first mortgage bonds.	4½% per annum,	$450,000.00
On income bonds.	3½% per annum,	700.000.00
	Total	$1.150,000.00

At a General Session of the INTERSTATE COMMERCE COMMISSION. held at its office in Washington. D. C., on the 1st day of February, A. D. 1911.

Present:

JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,
CHARLES C. McCHORD,
BALTHASAR H. MEYER,
Commissioners.

"Petitioner's Exhibit 9."

No. 1168.

FLORIDA FRUIT AND VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

ORDER PERMITTING INTERVENTION

Upon consideration of the record in the above entitled case, and the application of the Railroad Commission of the State of Florida for leave to intervene in the Supplemental Petition filed against the Florida East Coast Railway Company.

IT IS ORDERED, That said Railroad Commissioners of the State of Florida are hereby granted leave to intervene in the above entitled Supplemental Petition, and appear by counsel or otherwise at the taking of testimony, produce and cross examine witnesses, and be heard upon argument of said case.

IT IS FURTHER ORDERED, That a copy of the intervening petition, and of this order, be served upon the Florida East Coast Railway Company, and that a copy of this order be served upon each of the parties to said case.

[Seal of Interstate Commerce Commission]

A true copy:

(Signed) EDW. A. MOSELEY,
Secretary.

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 1168.

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Atlantic Coast Line Railway Company, Florida East Coast Railway Company et al.

S'ur Supplemental Petition.

PETITION OF INTERVENTION OF THE RAILROAD COMMISSIONERS OF FLORIDA.

Filed February 1, 1911.

To the Interstate Commerce Commission:

The petition of R. Hudson Burr, Newton A. Blitch and Royal C. Dunn, as Railroad Commissioners of the State of Florida respectfully represents.

1. That they are the Railroad Commissioners of the State of Florida, duly elected, commissioned and sworn, and have their office in the City of Tallahassee.

2. That as such Railroad Commissioners they are interested on the behalf of the people of Florida in the inter-state freight rates of common carriers into and out of the said State including the rates from the points of origin in the State to the base points in the State.

3. That in the above entitled cause, a supplemental petition has been presented by the complainant, charging that the rates of freight established by the defendant the Florida East Coast Railway Company for the transportation of citrus fruits and vegetables from points of production on the said railway in Florida to the City of Jacksonville (a base point) when
2 destined for beyond, are unjust and unreasonable, and praying that said rates may be reduced so as not to exceed the rates ordered by your honorable body and now in effect for pineapples, and praying other relief, as by the said supplemental petition will more fully and at large appear.

Wherefore your petitioners pray that they may be permitted to intervene in the above entitled cause upon the said supplemental petition, and also that an order be made, after investi-

gation, requiring the defendant the Florida East Coast Railway Company to put into effect rates on citrus fruits and vegetables in carloads and less than carloads from points of origin on its said railway, to Jacksonville when for beyond not in excess of those ordered by your Commission and now in effect for pineapples, and also requiring the said defendant to reduce the vegetable rates from points on its railway to Jacksonville when for beyond into an equitable proportion as those permitted for pineapples, and that such further and other order be made as your Commission may deem necessary in the premises.

Dated at Tallahassee, Florida this 12th day of January A. D. 1911.

(Signed) R. HUDSON BURR,
(Signed) NEWTON A. BLITCH,
(Signed) ROYAL C. DUNN.
As Railroad Commissioner of the State of Florida, Intervenors.

(Signed) LOUIS C. MASSEY,
Counsel for the Railroad Commissioners of Florida, Intervenors.

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 1168

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

No. 2566

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

vs.

ALABAMA & VICKSBURG RAILWAY COMPANY, ET AL.

SUPPLEMENTAL PETITION

[Filed May 4, 1911]

WILLIAM A. GLASGOW, JR.,
1018 Real Estate Trust Building, Philadelphia, Pa.
CHARLES D. DRAYTON,
Colorado Building, Washington, D. C.
Attorneys for Complainant.

Press of Byron S. Adams Washington, D. C.

INTERSTATE COMMERCE COMMISSION

Nos. 1168 and 2566.

SUPPLEMENTAL PETITION.

Florida Fruit & Vegetable Shippers' Protective Association,

vs.

Alabama & Vicksburg Railway Company, et al.

The supplemental petition of the above-named com-
8 plainant respectfully shows:

1. That complainant is an association formed by the growers, buyers and shippers of fruits and vegetables in the

State of Florida for their mutual benefit and advantage in the growing, shipping and selling of fruits and vegetables grown and raised in the State of Florida, with headquarters and offices in the city of Jacksonville, Florida.

2. That the defendants are common carriers engaged in the transportation of passengers and property by continuous carriage or shipment, wholly by railroad, between points in the State of Florida and points in the States of Pennsylvania, Ohio, Indiana, Illinois, Iowa, Michigan, Minnesota, Wisconsin,
North Dakota, South Dakota, Missouri, Kansas,
9 Nebraska, West Virginia, and between points in Florida and points in other States along the lines of said defendants, and as such common carriers are subject to the provisions of the Act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

3. That heretofore, to wit, on the eighth day of February, 1910, after having fully heard the testimony and arguments submitted on behalf of the respective parties hereto, this Honorable Commission made a report and entered an order in the above numbered cases (17 I. C. C. Rep., 552), and in and by its said order adjudicated and established for the transportation of pineapples and citrus fruits in carloads, minimum 300 boxes to the car, from Jacksonville and other Florida base points, so-called, to the points named below, proportional rates not to exceed the following in cents per standard box or crate of 80 pounds, as shown under the column headed "Future Rates," to wit:

Point.	Present rates. Cents.	Future rates. Cents.
Chicago	59.6	53
Indianapolis	56.0	50
Cleveland	58.8	53
Milwaukee	62.0	55
St. Louis	54.0	50
Columbus	56.0	50
Minneapolis	77.6	66
St. Paul	77.6	66
Kansas City, Mo.	71.6	62
Omaha	79.6	66
Cedar Rapids	72.8	62

That, further, this Honorable Commission stated in
10 its said report "referred to and made a part of" its said order herein, that, "If carriers do not check in rates substantially in accord with the opinion here expressed, further proceeding will be had looking to an examination in detail as to the various destinations in this territory and the making of

a comprehensive order;" that the defendants herein have failed and refused to "check in rates substantially in accord" with the opinion expressed by this Honorable Commission; but have made only minor reductions to certain of the points in the territory referred to which do not result in rates conforming to those established by the Commission's order applying to certain typical points in said territory, as above shown; all of which appears from the following table showing rates on citrus fruits from Florida base points, so-called, to the points enumerated, in effect prior to February 15, 1911, the same appearing under the column headed "Old rate"; also the rates established on February 15, 1911, appearing under the column headed "New rate effective 2-15-11," and which involved minor reductions to certain of the points, as shown; and present rates on Pineapples, indicating that the same have not been reduced to a common basis with those applying on citrus fruits, but on the contrary are even higher in some instances than the rates in effect on citrus fruits prior to the reductions effective February 15, 1911, to wit:

11	Citrus Fruits		Pine-apples.
	Old rate	New rate effective 2 15 11	Present rate.
Aberdeen, S. D.	113.3		113.2
Abilene, Kansas	110	105.8	100.8
Adrian, Michigan	59.2	54.2	59.2
Akron, Ohio	58.8	53.8	58.8
Albert Lea, Minn.	77.2		77.2
Alpena, Michigan	77		77
Alton, Ill.	59.6	54.6	59.6
Allegheny, Pa.	52		52
Alliance, Ohio	58.8	53.8	58.8
Anderson, Ind.	56.4	51.4	56.4
Anthony, Kansas	111.5	109.8	111.5
Ann Arbor, Mich.	59.2	54.2	59.2
Appleton, Wis.	74.8		74.8
Ashland, Wis.	77.2	72.2	77.2
Ashtabula, Ohio	59.6	54.6	59.6
Atchison, Kansas	71.6	73.8	78
Athens, Ohio	56	51.8	56
Aurora, Ill.	59	54.6	59.6
Battle Creek, Mich.	59.6	54.6	59.6
Bay City, Mich.	61.2	56.2	61.2
Beatrice, Neb.	84.5	80.2	84.5
Beloit, Wis.	74.8		74.8
Bellaire, Ohio	59.6	54.2	59.6
Bellfontaine, Ohio	56	51	56

Bellview, Ill.	54		54
Belleview, Kansas	108.4		108.4
Bismark, N. D.	129.2		129.2
Bloomington, Ill.	59.6	54.6	59.6
Bloomington, Ind.	56	51	56
Bucyrus, Ohio	57.2	52.2	57.2
Burlington, Iowa	62	57	62

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	Citrus Fruits Old rate	New rate effective 2 15 11	Pine-apples. Present rate.
Cadillac, Mich.	64.5	59.4	64.5
Cairo, Ill. (proper)	50	50	50
Canal Dover, Ohio	58.8	53.8	58.8
Canton, Ohio	58.8	53.8	58.8
Carthage, Mo.	80	77.8	80
Cedar Falls, Iowa	76	72.2	76
Centralia, Ill.	57.2		57.2
Champaign, Ill.	59.6	54.6	59.6
Chanute, Kansas	94		94
Cairo, Ill. (for beyond)	46	41	
Charleston, W. Va.	58	53	58
Chillicothe, Ohio	56	51	56
Chillicothe, Mo.	80	78	82
Chippewa Falls, Wis.	77.2		77.2
Circleville, Ohio	56	51	56
Clinton, Iowa	62	57	71.2
Cloquet, Minn.	74.8		74.8
Coffeyville, aKnsas	102		102
Conneaut, Ohio	60.8		60.8
Coffeyville, Kansas	102		102
Coshocton, Ohio	57		57
Council Bluffs, Iowa	79	75.4	79.6
Creston, Iowa	82		82
Crookston, Minn.	108.8		108.8
Danville, Ill.	56.4	51.4	56.4
Davenport, Iowa	62	57	62
Dayton, Ohio	54	49	54
Decatur, Ill.	58	53	58
Defiance, Ohio	57.2	52.2	57.2
Des Moines Iowa	59.2	75.4	59.2
Detroit, Mich.	59	54.2	59

13

	Citrus Fruits Old rate	New rate effective 2 15 11	Pine-apples. Present rate.
Dubuque, Iowa	62	57	62
Duluth, Minn.	77.2	72.2	77.2

East St. Louis, Ill.	54	50	54
Eau Claire, Wis.	77.2	72.2	77.2
Elkhart, Ind.	59.6	54.6	59.6
Elwood, Ind.	56.6	51.4	56.5
Elyria, Ohio	58.8		58.8
Emporia, Kansas	103.2		101.6
Erie, Pa.	53		53
Escanaba, Mich	77.2		77.2
Evansville, Ind. (proper)	48	48	48
Evansville, Ind. (beyond)	46	41	
Findlay, Ohio	57.2	52.2	57.2
Flint, Michigan	60.8	55.8	60.8
Fond du Lac, Wis.	74.4	69.8	74.4
Fort Dodge, Iowa	80	78.6	81.6
Fort Scott, Kan.	71.6		78
Fort Wayne, Ind.	58	53	58
Fostoria, Ohio	57.2	52.2	57.2
Frankfort, Ind.	57.6	52.6	57.6
Freemont, Neb.	85.2		85.2
Freeport, Ill.	59.6	54.6	59.6
Galesburg, Ill.	59.6	54.6	59.6
Galion, Ohio	57.2	52.2	57.2
Gallipolis, Ohio	58	53	58
Goshen, Ind.	59.6	54.6	59.6
Grand Forks, N. D.	109.8		109.8
Grand Island, Neb.	108.4		108.4
Grand Rapids, Michigan	61.2	56.2	61.2
Green Bay, Wis.	74.8		74.8

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	Citrus Fruits		Pine-apples.
	Old rate	New rate effective 2 15 11	Present rate.
Greenburg, Ind.	54	49	54
Greenville, Ohio	55.5	50.6	55.5
Hamilton, Ohio	51.5	46.6	51.5
Hannibal, Mo.	59.6	54.6	59.6
Hastings, Neb.	108.4		108.4
Holdredge, Neb.	123.6		123.6
Hudson, Ohio	59	53.8	59
Huntington, Ind.	58	53	58
Hutchinson, Kans.	105.6	102.6	106.8
Iola, Kansas	88		86.4
Ironton, Ohio	56.5		56.5
Ironwood, Mich.	77.2		77.2
Ishpeming, Mich.	72.5	72.2	72.5
Jackson, Mich.	59.2	54.2	59.2
Jackson, Ohio	56.5	51.4	56.5

Jacksonville, Ill.	59.6	54.6	59.6
Jamestown, N. D.	118		118
Jeffersonville, Ind. (proper)	49	49.2	49
Jeffersonville, Ind. (beyond)	46	41	
Jefferson City, Mo.	76.4		76.4
Joliet, Ill.	59.6	54.6	59.6
Joplin, Mo.	80	77.8	78.4
Kalamazoo, Mich.	59.6	54.6	59.6
Kankakee, Ill.	59.6	54.6	59.6
Kearney, Neb.	115		113.6
Kenosha, Wis.	62	57	62
Kenton, Ohio	56.5	51.4	56.6
Keokuk, Iowa	62	57	62
Kirksville, Mo.	71.6		78.8
Kokomo, Ind.	57	52.2	57
La Salle, Ill.	59.6		59.6

15	Citrus Fruits		Pine-apples.
	Old rate	New rate effective 2 15 11	Present rate.
LaCrosse, Wis.	74.8	69.8	74.8
Lancaster, Ohio	56.5	51.4	56.5
Lansing, Mich.	61	55.8	61
Lawrence, Kans.	108.4		108.4
Leavenworth, Kans.	71.6	73.8	78
Lima. Ohio	56.5	51.4	56.5
Lincoln. Neb.	82.8	78.6	82.8
Logan. Ohio	57	51.4	57
Little Falls, Minn.	93.5		93.5
Logansport. Ind.	57.6	52.6	57.6
Madison. Ind.	56.4	51	56.4
Madison, Wis.	62	57	62
Manistee, Mich.	64.4	59.4	64.4
Mansfield, Ohio	57.2	52.2	57.2
Marion, Ind.	57	52.2	57
Monkota, Minn.	70.2		72.4
Manitowoc, Wis.	74.8		74.8
Marion, Ohio	56.8	51.8	56.8
Marinette, Ohio	77.2		77.2
Marietta, Ohio	58	53	58
Marquette, Mich.	72.4	72.2	72.4
Marshallton, Iowa	86		86
Martin's Ferry, Ohio	59.2	54.6	59.2
Mason City, Iowa	80	83.6	87.6
Mattoon, Ill.	57.2	52.2	57.2

McCook, Neb.	133		133
Menominee, Mich.	74.4		77.2
Michigan City Ind.	59.6	54.6	59.6
Middleport, Ohio	58		58
Middletown, Ohio	52	49	52
Moberly, Mo.	71.6		77.2

16	Citrus Fruits		Pine-apples.
	Old rate	New rate effective 2 15 11	Present rate.
Moline, Ill.	59.6	54.6	59.6
Monmouth, Ill.	57.2	54.6	59.6
Mount Vernon, Ohio	57.2	52.2	57.2
Muncie, Ind.	56.4	51.4	56.4
Muscatine, Iowa	62		62
Muskegon, Mich.	61.2	56.2	61.2
Napoleon, Ohio	58	53	58
Nebraska City, Neb.	79.6	75.4	79.6
Newark, Ohio	56.8	51.8	56.8
New Albany, Ind. (proper)	49	49.2	49
New Albany, Ind. (for beyond)	46	41	49
New Comerstown, Ohio	58		58
New Philadelphia, Ohio	58.8	53.8	58.8
Norwalk, Ohio	58.8	53	58.8
Jefferson, Ind. (for beyond)	46	41	46
Oswego, Iowa	82		82
Oshkosh, Wis.	74.4		74.8
Ottumwa, Ia.	71.7	74.8	76.5
Peoria, Ill.	59.6	54.6	59.6
Peru, Ind.	54.6	52.6	57.6
Piqua, Ohio	55.6	50.6	55.6
Pittsburg, Kan.	80	77.8	78.4
Poplar Bluff, Mo.	62		62
Port Huron, Mich.	60.8	55.8	60.8
Portsmouth, Ohio	56	51	56
Princeton, Ind.	54		54
Quincey, Ill.	59.6	54.6	59.6
Racine, Wis.	62	57	62
Ravenna, Ohio	58.8	53.8	58.8
Richmond, Ind.	54	49	54

17	Citrus Fruits		Pine-apples.
	Old rate	New rate effective 2 15 11	Present rate.
Rockford Ill.	59.6	54.6	59.6
Rock Island Ill.	62	57	62

Salem Ohio	66		66
Saline, Kan.	1.10	1.05.8	1.10
Sandusky, Ohio	58	53	58
Sault Ste. Marie, Mich.	77.2	72.2	77.2
Sedalia, Mo.	82		82
Shawnee, Ohio	57	51.8	57
Shelbyville, Ind.	55.5	50.6	55.5
Sidney, Ohio	56	51	56
Sioux City, Iowa	79.6	81.8	81.6
South Bend, Ind.	59.6	54.6	59.6
Springfield, Mo.	78		78
Springfield, Ill.	59.6	54.6	59.6
Springfield, Ohio	54.8	59.8	54.8
Steubenville, Ohio	59.2	54.2	59.2
St. Cloud, Minn.		89.8	89.8
St. Joseph, Mo.	71.6	73.8	78
Streator, Ill.	59.6	54.6	59.6
Superior, Wis.	77.2	72.2	77.2
Terre Haute, Ind.	56	51	56
Tiffin, Ohio	57.2	52.2	57.2
Toledo, Ohio	58	53	58
Topeka, Kan.	93.2	89	93.2
Urbana, Ohio	55.5	50.6	55.5
Valparaiso, Ind.	59.6	54.6	59.6
Van Wert, Ohio	56.8	51.8	56.8
Vincennes, Ind.	54.8	49.8	54.8
Warren, Ohio	59.5	54.6	59.5
Washington, Ind.	57	50.6	57
Waterloo, Iowa	76	72.2	80.8

18

	Citrus Fruits		Pine-apples
	Old rate	New rate effective 2 15 11	Present rate.
Watertown, S. D.	100.8		100.8
Waukega, Ill.	62	57	62
Webb City, Mo.	82		82
Wellston, Ohio	65.4	51.4	56.4
Wichita, Kan.	105.6	102.6	105.6
Winfield, Kan.	110.4		110.4
Winona, Minn.	74.8	69.8	74.8
Xenia, Ohio	54	49	54
Youngstown, Ohio	59.6	54.6	59.6
Ypsilanti, Ohio	59.2	54.2	59.2
Zanesville, Ohio	57.2	52.2	57.2

And complainant avers that each and every of the rates now in effect and charged by defendants to all of the points, as

above enumerated on citrus fruits and on pineapples, are unreasonable and unjust, and subject complainant and the growers, buyers and shippers of fruits and vegetables in Florida, members of its association, to undue and unreasonable prejudice and disadvantage, in violation of the Act to regulate commerce as amended and more particularly sections 1, 2 and 3 thereof.

Wherefore, complainant prays that the defendants severally be required to answer the charges herein; that after due hearing and investigation an order be made, commanding said defendants and each of them to cease and desist from the aforesaid violations of the said Act to regulate commerce, in charging and collecting the aforesaid unreasonable and unjust rates; and that defendants may be required to apply as maxima in the future, to the transportation of citrus fruits and pineapples from said Jacksonville and other Florida base points, so-called, such rates of transportation as the Commission may deem reasonable and just; and that such order and further order or orders may be made as the Commision may deem fit and proper in the premises, and complainant's cause may appear to require.

Dated at Washington, D. C., this 28th day of April, 1911.

FLORIDA FRUIT AND VEGETABLE SHIPPERS' PROTECTIVE ASS'N.

BY WILLIAM A. GLASGOW, JR., and
CHARLES D. DRAYTON,
Its Attorneys.

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 1168

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

No. 2566

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION,

vs.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

SUPPLEMENTAL PETITION

Brief of Florida East Coast Railway Company on Supplemental Petition to No. 1168

ALEX. ST. CLAIR-ABRAMS,

Solicitor for Florida East Coast Railway Company.

Filed June 2, 1911

Drew, Jacksonville 223788

BEFORE THE INTERSTATE COMMERCE COMMISSION

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Up to the present writing no brief has been sent to me from the petitioners on the supplemental petition, and I am unable to ascertain upon what other ground, than the mere fact that a different rate has been fixed on pineapples, the petitioners base their demand for still further reductions. Certainly it is not and cannot be based either upon the unreasonableness of the existing rates or the business and resources of the company.

2 BASIS OF PETITION

The principal and indeed the sole ground for a reduction of rates on citrus fruits and vegetables is the action of this Commission in reducing the rates on pineapples, and it is contended that the rates should be made the same. I submit there is no reason for this contention. The demand for reducing the rates on pineapples arose from the alleged competition with Cuban pineapples, and the effect of the reduction made was to reduce the revenue of the company, for the fiscal year ending June 30th, 1910, $153,000.00. The situation with the orange and

vegetable industries is radically different from that of the pineapple industry. It costs enormously more to produce a crate of pineapples than it does to produce a crate of oranges and still more than it does to produce a crate of vegetables, and yet the price of pineapples at the producing point is but very little larger than the price of oranges or vegetables. In addition, nearly all of the oranges produced on the line of the Florida East Coast Railway are what are known as Indian River oranges, which have for years obtained the average highest price of Florida citrus fruits. A grove in full bearing, properly cultivated, will produce from 600 to 900 boxes of oranges to the acre and some orange groves have produced as high as 2,000 boxes to the acre. Vegetable farms are not so prolific but the cost of production is comparatively small. Nearly all of the vegtables are transported in combined refrigerator and ventilator cars, which are furnished without any extra charge to the shipper by the Florida East Coast
3 Railway Company. Last year this company paid $49,000.00 for the hire of these cars. This year it will have to pay about $60,000.00 or more.

Over-production and the shipping of undesirable vegetables are the sole causes of loss to the growers. During the present season we have seen Florida tomatoes selling as low as 75 cents per crate in New York and as low as $1.00 per crate in the large interior cities. Railroad freights have not been in the least responsible for this. The first cause has been the enormous over-production that has marked the season. Instead of having a practical monopoly for several weeks, other sections of the state, owing to the mildness of the recent winter, have come into competition with the East Coast growers. Again, large quantities of small and undesirable tomatoes have been pouring into the markets, breaking the prices of the most desirable sizes and qualities. The railroad companies cannot be held to blame for this.

Only last November, the Florida East Coast Railway Company, as shown by the tables put in evidence before this Commission, made large and radical reductions in rates on vegetables and citrus fruits from Homestead to points north of Miami. During the previous season, while the rates were much higher, the growers made handsome profits on vegetables because there was no over-production and no competition for weeks from points north of the vegetable producing section of the Florida East Coast Railway.

In addition to the expense of hiring refrigerator cars, the Florida East Coast Railway Company has to transport
4 these cars empty to the numerous distributing points at its own expense; it has to furnish the growers with sidetracks maintained by it; and, in addition, during the shipping

season, it is compelled to operate special trains to pick up the vegetables and to carry them to points where the trains can be made up for different destinations, all without charge to the growers.

Except that they are perishable, no reason is given why the rates on oranges and vegetables should be placed on an equal footing with pineapples. The conditions surrounding the industries are not the same as with pineapples, except in the fact that from climatic and other causes they are all subject to enormous fluctuations in volume. For instance, the citrus bloom this year on the East Coast, as throughout the state, has been very small and present indications are for a much smaller crop than was produced during the last season. As a result, the prospect of the business from citrus fruits for the coming year indicates a large reduction of income. While the growers will receive a higher price, the Florida East Coast Railway will not obtain as large an income while the cost of operating the road will actually increase.

In the matter of vegetables, it is perfectly clear that unless the growers reduce the acreage there will be a continued overproduction which the railroad companies cannot possibly control. Compelled to receive the frieght, the Florida East Coast Railway (as with other railroad companies) has to run the risk of the shipments being refused by the consignees, and the glutting of the market frequently results in the refused shipments not bringing enough to pay the freight. In such cases the railroad companies have to sustain the loss, as to sue the shippers for the deficit would cost more than the amount of recovery, even if judgment could be enforced. Most of the shippers are protected by the Homestead Exemption Laws of the State of Florida. Very few of them own over 160 acres of land, and it is difficult, if not impossible, to find a sufficiency of personalty over and above $1,000.00 exemption on which to levy executions; but even if the railroad companies could collect the freights, the effect of loss to the growers would be to so reduce the return freights by reason of the inability of the growers to purchase supplies that the loss on return freight would more than counter-balance the gain in the increased income from fruits and vegteables. It must not be forgotten either that the production of vegetables is subject to the same great fluctuations that pineapples and citrus fruits are subject to as a result of climatic conditions, floods, cold weather, and the like. In addition, there are years when wilt will spread throughout the vegetable crops and practically destroy them. The danger of fluctuations in vegetable crops is much greater than in the case of either citrus fruits or pineapples.

UNPROFITABLE RATES AND FLUCTUATIONS

So unprofitable to the Florida East Coast Railway Company have the rates proven that were fixed by the Interstate
6 Commerce Commission on pineapples from Cuba that the company has decided not to handle any further shipments of Cuban pineapples, and as a result it will lose the small income it derived last year from that source. Furthermore, the indications are that the pineapple crop of the coming season will be smaller than it was last year when their receipts from this source were over $153,000.00 smaller than for the fiscal year ending June 30th, 1909.

As an illustration of the fluctuations in fruits and vegetables I call the attention of the Commission to the fact that, owing to the drought of the past winter, the tomato crop on the East Coast matured sooner than usual and almost in a body, and, as a result, during March the Florida East Coast Railway Company transported a largely increased number of cars of tomatoes and glutted the markets of the country; the price of tomatoes fell below the cost of freight, picking and packing, going as low as 75 cents per crate in the principal markets with a maximum of $1.25 per crate, save in very rare and exceptional cases. Another disadvantage was that this very drought caused the tomatoes to mature small and inferior in quality and large quantities were shipped which should never have left the fields. This condition caused a large increase in the business of the Florida East Coast Railway Company from this source during the month of March. In April the business of the road was actually less than it was in April, 1910.

7 So, likewise, the bloom on the orange trees and the continued drought indicate a smaller orange crop than last year.

Except, therefore, in the matter of tomatoes, the company is confronted with decreased revenues from pineapples and oranges during the coming season, and if to this decrease (due to climatic and other causes) is added a further reduction of rates on citrus fruits and vegetables the effect on the finances of the company will become apparent.

INTERSTATE BUSINESS

It is contended by the petitioners that the reductions sought, being on interstate business, should be less, than on intrastate business. Unfortunately, in the matter of fruits and vegetables more than 80 per cent are interstate. The Florida East Coast Railway, being entirely within the State of Florida,

has not the advantage of the through traffic through other states that the Seaboard Air Line and Atlantic Coast Line enjoy. Its freight business of this character is very small, consisting of a very limited amount of freight to and from Cuba and the Bahamas, while the other roads transport freight to and from Florida through a number of other states. While its passenger traffic to and from Cuba and the Bahamas, etc., is becoming of appreciable volume, it is again at a disadvantage as compared with the other roads which transport these same passengers through other states over their lines of road and derive all the benefit which the additional revenue necessarily affords them.

8 Again, owing to the character of its passenger traffic, the Florida East Coast Railway is compelled to have and maintain a large passenger equipment which is idle at least seven months in the year.

Nor is the difference in passenger rates on the different lines as great as has been claimed. The Florida East Coast Railway sells 1,000-mile tickets at 2½c per mile and charges for single tickets 3c per mile. The other roads charge 2c per mile for 1,000-mile tickets and 3c per mily for single local tickets. The Florida East Coast Railway, however, on its Mayport Division, has been compelled to charge less than 2c per mile, and its average rate per mile for passengers is about the same as the other roads.

Furthermore, at this time, as it probably will be for several years, its passenger receipts are out of proportion to the freight receipts and markedly so when compared with the other roads of Florida; and until the volume of freight increases and the proportion between passenger and freight becomes normal, further reduction of freight rates will, I submit, be unjust and unequitable.

MISSTATING FACTS

While it is true, as contended before Mr. Commissioner Prouty in Jacksonville, that the work on the extension had begun before the passage of the bill providing for the extension, it is nevertheless true that before any work was begun the most positive assurances were given to the company that the bill would be passed and, but for these assurances, there

9 would not have been the slightest necessity for the East Coast to extend its line along Bay Biscayne from Miami. Necessarily its situation at Miami gave it a certainty of the traffic on the Bay.

It is also a fact worthy of notice that until the enormous developments took place between Miami and Homestead the

very men now insisting that Homestead is the terminus of the main line refused to recognize any main line beyond Miami. The purpose now of extending the main line to Homestead is clearly to deprive the extension of the enormous development, especially in the fruit and vegetable business, which has taken place between Miami and Homestead.

There is now, I understand, development going on at Key Largo in the planting of limes and pineapples, and I suppose that as soon as this development has attained magnitude the Commission will be asked not to consider Key Largo as a part of the extension but as part of the main line.

THE EXTENSION.

Some remarks made by the commission in its former decision on the pineapple question are now used by the petitioners upon which to found a demand that the Commission shall ignore the extension in considering the petition for reduction of rates. The petitioners evidently desire to obtain all the benefits the extension has conferred upon the main line but still ignore the extension as a factor in the prosperity of the main line. I submit that this cannot be done without doing great injustice to the Florida East Coast Railway Company.

For the fiscal year ending June 30th, 1910, the aggregate earnings of the entire line, from freight and passengers going to and from on the extension, were as follows:

Gross earnings from freight from Cocoanut Grove to and including Knights Key	$184,544.90
Passenger business to and from and including Knights Key	137,179.26
Freight from the main line to and from the extension on account of construction work	74,275.57
Passengers for work on extension	7,060.55
Total	$403,060.28
Deducting the proportion applicable to the extension on a mileage basis, we have a total of	60,320.83
Leaving a net gain to the main line between Miami and Jacksonville, as a direct result of the business of the extension, of	$342,739.45

While the development on the extension between Miami and Homestead has been large since the road was put into operation, the aggregate of $403,060.28 does not represent much over one-third of the benefits derived by the main line from the extension, the gross business from freight and passengers at the several points between Miami and Homestead, including Home-

stead, for the fiscal year ending June 30th, 1910, being
11 only $144,566.89, so that the main line derived from the extension between Homestead and Knights Key an aggregate of $258,493.27 exclusive of mail and express matter. Nor is this all, the amounts received from mail and express matter still further swell the aggregate gain the main line has obtained from the extension.

It must not be forgotten, also, that the enormous increase of business in Miami is due very largely to the extension, and that a considerable amount of freight carried to and from Miami originates on the extension between Miami and Cocoanut Grove.

It is safe to say that the construction of the extension has added more than $375,000.00 per annum to the earnings of the main line between Miami and Jacksonville at but very little additional expense to the main line. In fact this extension has produced more revenue to the main line than any of the other branches and feeders of the main line.

I submit that this Commission cannot ignore the extension without doing great injustice to the Florida East Coast Railway Company.

12 COST AND PRESENT VALUE.

It is clear that the Commission has not ascertained exactly the cost of construction of this road. The actual cost from Miami to Jacksonville and branches was originally, in round figures $13,500,000.00

Up to the time of the filing of the suit by the Colonial Trust Company against the Florida Railroad Commission there had been expended additional sums for betterments, improvements and equipment, charged to capital account..... 3,500,000.00

And since then, up to the fiscal year ending December 31, 1910, including joint terminals with A. C. L. 1,118,000.00

Making a total, in round figures, of $18,118,000.00

To replace this road, with its equipment on the main line from Miami to Jacksonville, with the branches, would cost today approximately $22,000,000.00. The book value of the property from Jacksonville to Knights Key, with branches, as shown by the company's reports, aggregates a little over $35,000,000.00, or less than the outstanding bonds; and the actual present value of the road cannot be far from $40,000,000.00. Considering, however, at this time, only the cost of the main line from Miami to Jacksonville, with branches at $18,118,000.00, I submit that the entire profits of the entire line including the extension, do not constitute a reasonable profit on the actual

cost of the main line from Miami to Jacksonville and its
13 branches.

The last annual report of the Florida East Coast Railway Company showed its earnings and expenditures on the entire line to have been as follows, for the fiscal year ending June 30th, 1910:

Gross earnings	$3,687,434.30
Expenses	2,205,812.87
Net earnings	$1,481,621.43
From which must be deducted for taxes, hire of equipment, and rentals	220,038.26
Leaving net earnings	$1,261,583.17
Deducting 4½ per cent interest on $10,000,000.00 first mortgage bonds	450,000.00
Balance	$ 811,583.17
Deducting 3½ per cent interest on $15,000,000.00 second mortgage bonds, less $2,341.37 earned from interest on deposits	697,658.63
Leaving a balance to profit and loss of	$ 113,924.54

There were, on the 30th of June, 1910, $3 000,000.00 of stock outstanding for which par was paid in cash. Not a dollar of dividend has been paid on this stock for many years. The balance to profit and loss (if the entire sum had been
14 applied) would not have paid 4 per cent on this stock; but this balance was not so applied, but has been used in necessary expenditures.

The entire amount paid out in interest on bonds was, in round figures, $1,150,000.00, or less than 6½ per cent on the cost of the main line from Miami to Jacksonville and branches, and about 5 per cent on the present value of the main line from Miami to Jacksonville and branches. In the State of Florida 8 per cent is the legal rate of interest and 10 per cent by contract. Money cannot be borrowed in Florida on anything like good security for less than 7 per cent, while ordinarily 8 per cent is paid. The banks charge from 8 per cent to 10 per cent for loans; and the ordinary borrower of money pays 8 per cent. In exceptional cases of the highest class security 7 per cent is paid and, on rare occasions from peculiar circumstances, you will hear of a loan at 6 per cent, but this is very seldom. In the recent case of the Northern Pacific Railroad Company, et als. vs. Minnesota, decided by the Circuit Court of Appeals for the Eighth Circuit, a profit of 7 per cent on the capital stock, after paying all operat-

ing expenses, fixed charges on the bonded indebtedness and providing for a large surplus, was held to be reasonable.

In the case of the Florida East Coast Railway Company, even if we eliminate the extension and the enormous increased earnings it has brought to the main line from Miami to Jacksonville, it has not earned, under present rates for freight and passengers, enough to earn 7 per cent on the actual cost, or 6 per cent on the present value. I submit, however, that if this extension from Miami to Knights Key is to be ignored, then it would be just as reasonable to ignore the branches from Orange City Junction to New Smyrna, from Sanford to Titusville, from South Jacksonville to Mayport, and from Palatka to East Palatka and San Mateo, for not one of these feeders to the main line is as prolific of earning a profit to the main line as the extension from Miami to Knights Key.

WHAT IS A REASONABLE RATE.

It has been laid down by repeated adjudications of the United States Supreme Court, United States Circuit Court of Appeals, and United States Circuit Courts that "As to what constitutes a reasonable rate must depend upon the facts in each case and cannot be determined without reference to the interests of the public."

In the case of Chicago & N. W. Ry. Co. vs. Dey, et al., 35 Fed. Rep., page 866 the late Mr. Justice Brewer said, page 875:

> "The reasonableness of a rate changes with the changed condition of circumstances. That which would be fair and reasonable today, six months or a year hence may be either too high or too low."

On page 879, the late Mr. Justice Brewer said:

> "Compensation implies three things: Payment of cost of service interest on bonds, and then some dividend. Cost of service implies skilled labor, the best appliances, keeping of the roadbed and the cars and machinery and other appliances in perfect order and repair. The obligation of the carrier to the passenger and the shipper requires all these. They are not matters which the carriers can dispense with, or matters whose cost can by them be fixed. They may not employ poor engineers, whose wages would be low, but must employ competent engineers, and pay the price needed to obtain them. The same rule obtains to the engines machinery, roadbed, etc., and it may be doubted whether even the legislature, with all its power, is competent to relieve railroad companies, whose means of trans-

portation are attended with so much danger, from the full performance of this obligation to the public. The fixed charges are the interest on the bonds. This must be paid, for otherwise foreclosure would follow, and the interest of mortgagor swept out of existence. The property of the stockholders cannot be destroyed any more than the property of the bondholders. Each has a fixed and vested interest, which cannot be taken away. I know that often the stockholders and the bondholder are regarded and spoken of as having but a single interest; but the law recognizes a clear distinction. A mortgage on a railroad creates the same rights in mortgagor and mortgagee as a mortgage on my homestead. The Legislature cannot destroy my homestead simply because it is mortgaged, neither can it destroy the stockholders' property because the railroad is mortgaged. It cannot interfere with a con-
17 tract between the company mortgagor and the mortgagee, or reduce the stipulated rate of interest; and so, unless that stipulated interest is paid, foreclosure of course follows, and the mortgagors' rights, the property of the stockholders, are swept away. Whatever individuals may do by private contract to modify existing rates of interest, the legislature has no compulsory power in the matter. While, by reducing the rates, the value of the stockholders' property may be reduced, in that less dividends are possible,—and that power of the legislature over property is conceded,—yet, if the rates are so reduced that no dividends are possible, and especially if they are such that the interest on the mortgage debt is not earned, then the enforcement of the rates means either confiscation, or compelling, in the language of the Supreme Court the corporation to carry persons or property without reward."

In the case of Shepard vs. Northern Pacific Ry. Co., 184 Federal Reporter, page 765, recently decided by Judge Sanborn in the Circuit Court of the United States for the 3rd Division of the District of Minnesota, the learned Justice, (who certainly cannot be even suspected of any leaning toward railroad corporations) sustained the report of the master finding that a net return of 7 per cent on the value of the railroad's properties in dispute was a reasonable profit, saying on page 815 and 816:

"Complaint is made that the master finds that the companies are entitled to a net return of 7 per cent. per annum upon the respective values of their properties devoted to this public use. The character of the business in

which an investment is made, the locality in which
18 it is placed, the returns secured in that locality from other investments of a similar nature, the uniformity and certainty of the return, and the risks to which the principal and the income from it are subjected condition the measure of a fair return upon capital invested. An investment in a bank, in a factory, in a mercantile, manufacturing, or agricultural business, is substantially free from regulation by the government and exempt from any duty to the public, except that of paying taxes. If the business in which such an investment is made is unprofitable, its owners may promptly discontinue its operation until more prosperous days come and then return to their undertaking. An investment in a railroad which operates in many states is subject to the regulations of its business by many governments. Its owners owe the duty to the government and to the public to operate their railroad continually in days when its operation is unprofitable as well as when it is remunerative, a duty it must discharge under the penalty of the forfeiture of their property if they fail. In view of these facts they ought to be permitted to receive a return large enough to enable them to accumulate in prosperous days a surplus sufficient to enable them to protect their property in days of disaster and to make their average return through days of prosperity and of adversity fair and just. The lands in Minnesota through which these railroads extend are fertile and productive. The cities, villages, and towns they reach are rapidly increasing in population and wealth, and the people they serve are thriving and successful. The evidence satisfies that the railroads are maintained in excellent condition, that they
19 are efficiently and on the whole economically managed and operated, and are rendering commendable service. Justice to the thriving people they serve does not require that the owners of these railroad properties should be deprived of a fair return upon their values. To deprive them of such a return would prevent advances and tend to compel reductions in the wages and salaries of their employees, would tend to prevent the extension of their lines into portions of the state where the development and accommodation that railroad service assures would be welcome and may be needed, to deteriorate the character of the service they render, and to retard the general prosperity. The legal rate of interest on a debt in Minnesota, in the absence of contract, is 6 per cent., and by contract it may be 10 per cent., per annum. Rev. Laws Minn., 1905,

Sec. 2733. Rational investments in agricultural, manufacturing, mercantile, and other industrial pursuits, and even well secured loans, yield returns in Minnesota corresponding with these lawful rates. Investments in railroads and the returns thereon are at the risk of failures and partial failures of crops, of the disasters, delays, and expenses of unusual storms, snow, and cold, of the great financial disasters which occasionally prevent or delay the movement of traffic, and of the burden of continuous operation whether profitable or unremunerative. It is an axiom in economics that the greater the risk the greater must the return be upon invested capital, and the conclusion is irresistible that a net return of 7 per cent. per annum upon the respective values of the properties of these companies in Minnesota devoted to transportation is not more than the fair return to which they are entitled under the
20 Constitution of the United States."

LIMIT OF ECONOMY REACHED.

The last annual report of the Florida East Coast Railway Company clearly demonstrates that the limit of economy in operating expenses has been reached. It has now become absolutely necessary to spend more money in the maintenance and keeping up of the roadway and its equipment. Annexed to this brief is a comparative table showing the expenses of the road per mile as compared with other roads. It is necessary to complete the work of ballasting the track, especially on the main line between Miami and Jacksonville; sidetracks must necessarily be lengthened; and the company is compelled to purchase twenty locomotives to replace those which have become or are fast becoming unfit for operation. It is absolutely necessary for the company to earn the funds necessary to defray these expenditures. It has, also, to replace rails that are becoming worn out, and the funds to buy these rails must be obtained from the earnings of the road. That these are proper and necessary operating expenses was clearly laid down by the United States Supreme Court in the case of Reagan vs. Farmers Loan & Trust Company, 154 U. S. Rep., page 362; and it is perfectly clear that the future earnings of the road for the fiscal year ending June 30th, 1910, would be insufficient to defray these expenses and leave anything like a reasonable pro-
21 fit on the actual cost of the road, much less on its present value, unless there is a large increase in its receipts.

An examination of the expenditures for the fiscal year ending June 30th, 1910, as shown by the comparison with other roads in the tables attached to this brief, demonstrates the

necessity for increased expenditures. These additional expenditures will, this year, amount to many thousands of dollars, all of which the company has a right to earn out of its freight and passenger traffic. If this be added to $144,000.00 per annum, additional salaries and wages, we have a total of not less than $300,000.00 additional business necessary to enable it to earn even the low interest of 3½ per cent. on its second mortgage bonds. It has been able heretofore to keep within the limits of expenditures shown in its reports because its equipment and the condition of the rails and roadbed warranted this economy. But, as in the case of all railroads, the day of practical reconstruction has arrived and these additional operating expenditures have become imperatively necessary. If every time the business increases, the rates are to be reduced, it is perfectly clear that the roadbed and its equipment will suffer or the bondholders must be deprived of the interest on their bonds.

ADDITIONAL EXTRA EXPENDITURES NECESSARY.

In addition to the necessity for greatly enlarging the operating expenses of the road in the matter of equipment, renewals of rails, extension and renewals of sidings replacing of locomotives and ties and ballasting the track, the Florida
22 East Coast Railway Company has been compelled to increase the salary and wage list by an aggregate of about $144,000.00 per annum. Even with an increased volume of shipments of vegetables, at the existing rate the increase of business will not be sufficiently large to enable the road to defray these necessary expenditures and earn 3½ per cent. on the second mortgage bonds.

It has been suggested that by furnishing its own refrigerator and ventilator cars, the company could save the amount now paid for hire of cars, but it would require 1,500 cars and an increased capital of $1,800,000.00 to procure these cars and necessarily the road would be entitled to earn a sufficient sum to pay interest on this additional capital. No second mortgage bonds of a Southern Railroad, bearing only 3½ per cent. interest, could be sold at par, and it is doubtful, under existing conditions, if a first mortgage bond at 4½ per cent. would bring par. It is quite probable therefore that instead of its being a saving to the road to purchase its own refrigerator and ventilator cars it would be a source of additional burden.

It has been contended heretofore, and may still be contended, that the expense of completing the ballasting of the road furnishing new rails, replacing locomotives, etc., should be charged to betterments and improvements and not to operating expenses, and it may also be urged that the rule of the State Railway Commission requires this done; but no rule of a Commis-

sion can set aside the plain adjudications of the Supreme Court of the United States.

In the case of Reagan vs. Farmers Loan & Trust Co.,
23 154 U. S., 407, the Supreme Court of the United States, in reply to such a contention, said:

"Again, the sum of $302,085.77 appears in that table, under the description 'cost of road, equipment and permanent improvements admitted to have been included in operating expenses,' and is added to the income as though it had been improperly included in operating expenses. But before this change can be held to be proper, it is well to see what further light is thrown on the matter by other portions of the report. That states that there were no extensions of the road during that year, so that all of this sum was expended upon the road as it was. Among the items going to make up this sum of $302,085.77 is one of $113 212.09 for rails, and it appears from the same report that there was not a dollar expended for rails, except as included within this amount. Now, it goes without saying that in the operation of every road there is a constant wearing out of the rails and a constant necessity for replacing old with new. The purchase of these rails may be called permanent improvements, or by any other name, but they are what is necessary for keeping the road in serviceable condition. Indeed, in another part of the report, under the head of 'renewals of rails and ties,' is stated the number of tons of 'new rails laid' on the main line. Other items therein are for fencing, grading, bridging and culvert masonry, bridges and trestles, buildings, furniture, fixtures, etc. It being shown affirmatively that there were no extensions it is obvious that these expenditures were those necessary for a proper carrying on of the business required of the company."

24 INCREASED EARNINGS NECESSARY.

I have shown that increased earnings are necessary to enable the Florida East Coast Railway Company to pay the increased cost of operation and earn the small interest paid on its bonds. If the present petition is granted the loss of revenue will in effect wipe out all increase from freight. It must be borne in mind that the company has already voluntarily reduced the rates from points where over 40 per cent. of the vegetables are produced; that it has also reduced the rates on other freights aggregating nearly $90,000.00 a year. To make the further reduction demanded by the petitioners is to leave nothing but the increase of passenger business to depend upon. This is an

uncertain quantity. During the season just ended there was a very large increase of the passenger traffic, necessarily accompanied by a large increase of expenses in operating passenger trains. This, however, was and is not normal. The exploitation of lands in the Everglades brought to Fort Lauderdale and Miami thousands of persons who had contracted for the purchase of these lands and who were there to attend to the division thereof. This traffic was and is necessarily temporary.

As in the case with all railroads, the earnings from freight must be depended upon for anything like a reasonable profit. The proposed reduction will therefore tend to deprive the Florida East Coast Railway of its ability to maintain the interest on its bonds and will render altogether hopeless any prospect of paying dividends on its stock.

Without ignoring the public, I must submit that, to
25 enable the Florida East Coast Railway Company (and, indeed, any railway company) to properly and efficiently perform its duties to the public, it must be permitted to earn a sufficient income not only to pay its operating expenses and to earn a reasonable profit on its capital but also to so establish and maintain its credit as will enable it to secure additional capital for such extensions and betterments as cannot be included in its operating expenses. It should also be permitted to earn a moderate surplus each year to provide for necessarily unforeseen expenditures.

By way of illustration, I call attention to the storm of last year, which swept away several miles of the roadbed of the Florida East Coast Railway, necessitating a suspension of traffic for several days, the employment of a large force of men to reconstruct the destroyed track, which required the expenditure of a considerable sum of money; and such expenditure for reconstruction must necessarily be taken out of operating expenses, for, if every time, by reason of the elements or natural decay in the wearing out of rails, equipment, etc., new capital must be furnished, it must inevitably result in an enormous over-capitalization of the lines and increase the burdens of the traveler and shipper. If every time the business increases, the rates on freights and passengers are to be reduced and additional expenditures imposed on the railway company, it is perfectly clear that it will be impossible to maintain its credit, to earn a reasonable profit from its operation, and that these handicaps on the company will retard the development of the
State by preventing the construction of extensions and
26 additions and betterments calling for new capital.

It follows, therefore, that the policy sought by the petitioners, if successfully carried out, must result in great injury to the people of Florida. Professional agitation for reduced rates and increased expenditures may be profitable to those

engaged in such agitation, but must necessarily ultimately prove disastrous to the entire state and more particularly to the territory through which the Florida East Coast Railway runs. It may be possible to compel a railway company to increase its expenses and reduce its rates on freights and passengers to the point where investment becomes unprofitable, but no method has yet been devised, nor can any method ever be devised, by which any new capital can be compelled to contribute either to betterments or extensions in the face of such a situation.

DISMEMBERING THE SYSTEM.

I submit that this Commission cannot pick out portions of the line which do not of themselves earn large sums of money and ignore them. I insist that the entire system must be considered; and that the benefit each division confers upon the main trunk from Jacksonville to Miami must also be considered. The decision rendered by United States District Judge Trieber in re Arkansas Railroad Rates, 168 Fed. Rep., page 720, and the authorities cited therein, have been quoted as justifying ignoring the extension, and the late Mr. Justice Brewer's decision in Reagan vs. Farmers Loan & Trust Company, supra, has also been cited to sustain this contention, but in no case
27 has any Court held that any part of a line must be disregarded. In the case of Reagan vs. Farmers Loan & Trust Company, supra, Mr. Justice Brewer said, after remarking that it was not laid down as an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable, "And yet justice demands that every one should receive some compensation for the use of his money or property, if it be possible without prejudice to the rights of others." In the same decision, commenting on the circumstances which may arise, he uses this language: "The road may have been unwisely built in localities where there is not sufficient business to sustain the road." Not a single ground has been made before this Commission upon which it can predicate the idea that the extension from Miami to Knights Key has been unwisely built. On the contrary, this extension is now paying even on a mileage basis, more than its operating expenses from Miami to Knights Key and it is producing for the main line from Miami to Jacksonville an increase of business of over $400,000.00 per annum which the main line would not and could not have earned but for this extension. It is also to be noted that this increase of business in freight and passengers going over the extension has been steady and large ever since the extension was opened to Knights Key.

In this case, In re Arkansas Railroad Rates, the right
28 of the entire line to earn a profit was recognized by Judge Trieber, and a profit bearing from 1½ per cent. to 5 per cent. allowed the different lines of roads embraced in the system as valued for intrastate traffic. The smallest profit was that of the Chicago, Rock Island & Pacific Railway Company, whose entire gross freight and passenger earnings on 147 miles of road was about $464,000.00, but this had only been recently built through a swampy section of the State and had been but a short time in operation.

In Re Arkansas Railroad Rates, supra, 168 Fed. Rep., 736.

Discussing the right of the road to consideration, Judge Trieber says, page 733:

> "New lines or branches to increase the business of the main line or the exercise of bad judgment in the building of a railroad, are matters to be considered in determining what rates would be fair and just to the corporation as well as the public. That the railroads are entitled to reasonable profits on their investments, and the public to reasonable rates, or, to express it differently, that the rights of the public and railroad companies are reciprocal, is the correct rule of law."

IGNORING THE RAILROAD'S INTERESTS.

I have not attempted to ignore the rights and interests of the public in the matter of freight rates, but it is notable that in the discussion of this question the representatives of the petitioners utterly ignored any rights the railroad company may have; they ignored the increased expenditures imposed by
29 higher wages, higher prices of everything used on the road; exactions of the State Railroad Commission; benefits accruing to the main line between Miami and Jacksonville from the extension—everything in fact except that the road earns more than its bare operating expenses; they demanded special facilities which save them several cents per crate in handling and marketing their products, the expense of which has to be borne by the company without additional compensation, constituting a fixed annual charge on the operating expenses; without a shadow of proof they raise the cry of over-capitalization and yet make demands which, if acceded to, would compel an increase in the capital invested and add for all time to the burdens of the road as well as to those of the shippers. And yet from a personal experience in orange and vegetable culture dating back for over thirty years, the writer of this brief knows that the grower has not been benefited one dollar; that

except during the years after the freeze of 1894-1895, he has received no greater net returns for his fruit and vegetables than he did when the rates of freight were much higher; the cost of production but very little less; the facilities very poor; and the production subject to as active a competition as at present exists. Thirty years ago large quantities of citrus fruits were imported from Italy to our seaports, and from Cuba and Jamaica; in addition, Florida had an active competition from the large number of groves then existing in the State of Louisiana, and our population was very much smaller; perhaps more than one-half of the Florida orange crop had to be hauled by
30 teams over miles of heavy sandy roads to water transportation as there was not a single railroad in South Florida to transport anything. I paid 50c per crate to ship fruit from Lake Eustis down the Ocklawaha River to Palatka, then an additional freight from Palatka to Fernandina to deliver to the Mallory line for transportation to New York. The rate today from the same point is 17c per crate to Jacksonville, and the rate from the same point to New York is now less than it then was to Jacksonville, and the same great reduction has taken place on the Florida East Coast Railway since its construction.

A LIMIT SOMEWHERE.

It must be borne in mind that beyond a certain point increased business does not increase the profits of a railroad company because when that certain point is reached, such increase calls for enormous additional capital in the construction of double tracks, additional general sidings, increased number of private sidings, increased stational facilities, and the resulting increase in general operating expenses.

PREVIOUS LOSSES.

It must not be forgotten that until the last two years there has been, with but one small exception, a deficit in the business of this road every year. One year showed a small apparent profit, but this was more than counter-balanced by the large floating indebtedness of the company.
31 I call the attention of the Commission specially to the decision of Judge Sanborn in 184 Federal Reporter, page 765, as sustaining throughout the contention we make here as to rates.

COMPARISONS WITH OTHER ROADS.

The Florida East Coast Railway is peculia y situated. Its passenger traffic is nearly 40 per cent. of its entire business, the great mass of its producing freight consists of fruit and vegetables; it does not transport phosphate rock, cotton, or kaolin;

its naval stores business is very small and limited practically to the northern end of the line; its business in lumber and timber is purely local and is also limited in quantity. On the other hand the two other large systems in the state, viz: the Seaboard Air Line and the Atlantic Coast Line, carried nearly all of the 1,770,000 tons of phosphate taken from the mines during the fiscal year ending June 30th, 1909. These roads also transport large quantities of cotton, kaolin, and perhaps 80 per cent. of the naval stores, in addition to being the lines on which the great mass of the timber and lumber produced by the state is transported. In addition, these roads transport at least 80 per cent. of the citrus fruit crop of the state and, combined, transport probably as much vegetables as the Florida East Coast Railway. The passenger traffic of these two systems is evenly distributed throughout the year, their records showing a difference of only 8 per cent. between their passenger receipts during one six months of the year and the other; while the
32 passenger traffic of the Florida East Coast Railway for six months within the winter season is about 70 per cent. and the remaining six months 30 per cent. During four or five months of the winter season the passenger trains of the main line of the Florida East Coast Railway have to be increased from two to five daily each way. In the early part of the season they go down to Miami loaded and come back empty; in the latter part of the season they go down comparatively empty and return loaded; during the balance of the year the two remaining trains run each way comparatively light.

Again, owing to the scarcity of tie timber and fuel on the line of the Florida East Coast Railway, it has to import large numbers of ties, paying freight to other roads for transporting them to its line; and has to import large quantities of coal. Both the other systems have roads running into the coal mines of Alabama, and have large amounts of tie timber on their lines.

Furthermore, the average population to the mile on the Florida East Coast Railway is less than half as great as it is on the lines of the other two systems.

As a consequence the rates of freight and passage that would be reasonable on the Florida East Coast Railway cannot be ascertained from the rate that may be allowed on the other lines; and where the conditions of all the roads are considered, it is clear that the present rates on the Florida East Coast Railway are reasonable.

CONCLUSION.

33 In conclusion, I submit to the Commission that the existing rates on citrus fruits and vegetables should not be disturbed. The intrastate business of the road in these

articles is very small, practically its entire traffic in citrus fruits and vegetables being interstate, its receipts from freight are still abnormally small as compared with its passenger receipts; it needs a large increase of earnings to enable it to pay its operating expenses and earn even the small interest paid on its bonds; it has just made radical reductions in the rates on citrus fruits and vegetables from all the points having the greatest developments; it must, for several years, spend large sums of money in replacing locomotives, rails, ties, repairing and enlarging stations; as already stated, it has been compelled to increase its expenses for wages something like $144,000.00 per annum; even with an increase of its earnings, it may not be able to earn 3½ per cent on its second mortgage bonds. I submit that in the face of these facts the claim of the petitioners is unreasonable, and it would be unjust to the company to compel it to submit to further reductions in the rates of freight.

Respectfully submitted,

(Signed) ALEX. ST. CLAIR-ABRAMS,
Attorney for Florida East Coast
Railway Company.

FOR THE FISCAL YEAR ENDING JUNE 30, 1910

34 Expenses per mile as follows:

Roadway and Track Bridges, Trestles and Culverts.

Fla. East Coast Railway Co.	$ 476.16
Illinois Central R. R.	1,426.49
Atchison, Topeka & Santa Fe R. R.	1,795.79
Mo., Kas. & Texas Ry.	1,333.26
Nashville, C. & St. Louis R. R.	1 449.72
Chicago, Indianapolis & Louisville R. R.	1,287.28

Maintenance of Equipment.

Fla. East Coast Railway Co.	$ 629.40
Illinois Central R. R.	2,967.52
Atchison, Topeka & Santa Fe R. R.	1,569.18
Mo., Kansas & Texas Ry.	1 077.73
Nashville, C. & St. L. R. R.	1,581.11
Chicago, Indianapolis & Louisville R. R.	1,335.68

Traffic Expenses.

Fla. East Coast Railway Co.	$ 111.39
Illinois Central R. R.	273.93
Atchison, Topeka & Santa Fe R. R.	213.21

Mo., Kansas & Texas Ry.	216.29
Nashville, C. & St. L. R. R.	350.69
Chicago, Indianapolis & Louisville R. R.	285.13

Transportation Expenses.

Fla. East Coast Railway Co.	$1,900.30
Illinois Central R. R.	4,337.34
Atchison, Topeka & Santa Fe R. R.	3,211.55
Mo., Kansas & Texas Ry.	3,328.01
Nashville, C. & St. L. R. R.	3,242.29
35 Chicago, Indianapolis & Louisville R. R.	3,204.24

General Expenses.

Fla. East Coast Railway Co.	$ 171.52
Illinois Central R. R.	270.17
Atchison, Topeka & Santa Fe R. R.	248.94
Mo., Kansas & Texas Ry.	290.15
Nashville, C. & St. L. R. R.	227.75
Chicago, Indianapolis & Louisville R. R.	296.95

ADDENDUM.

After the foregoing brief had gone to press, on Tuesday, the 23rd of May, I received a brief from Messrs. Hudson & Boggs, which referred entirely to a suit against the Southern Express Company. On the following day, the 24th, I received from Mr. Frederick C. Bryan, representing the Florida East Coast Railway Company in Washington, the brief of Messrs. Hudson & Boggs applicable to this supplemental petition.

THE REAL FIGURES

The brief is a characteristic exhibit of the indifference to time and figures of the petitioners' attorneys. Part of Mr. Beckwith's testimony quoted therein was evidently given in January or February, 1910, before the earnings of the Florida East Coast Railway Company for that fiscal year had been ascertained and necessarily referred back to the earnings of the fiscal year ending June 30, 1909. In some lines of freight the Florida East Coast Railway Company's rates were higher than those then in effect on other lines operated in Florida and for reasons fully set forth in the foregoing brief. Mr. Beckwith could not have stated that the percentage of freight earnings had grown from 50 per cent. to 80 per cent. because, as shown

by the report of the road for the fiscal year ending June 30, 1910, the gross earnings of the road were $3,687 443.30; of which $1,290,966.32 were from passengers, $12-779.20 from rent and $67, 933.27 from miscellaneous receipts. From freight proper the total gross earnings were $1,954.297.80 or only 53.01 per cent. of the gross earnings, the balance being from express, mail, etc., not applicable to freight proper. At no time has the percentage of freight earnings been 80 per cent. of the gross earnings or anything near it. If express and mail matter were included as freight, the freight earnings would only be a trifle over 60 per cent. of the gross earnings; but, as a matter of fact, the freight earnings proper were only a trifle over 53 per cent. of the gross earnings of the road.

I shall not discuss the testimony of Mr. Burr for obvious reasons. Neither will I admit the contention of the petitioners that the extension of the road begins at Homestead for it does not. Of course, carload earnings on citrus fruits and vegetables are relatively higher than on lumber and other commodities. This must necessarily be so. The cost and expense of handling lumber and non-perishable freight is much lower than on perishable freight. A special equipment is necessary to handle fruit and vegetables. The schedule requires a large increase of speed necessitating largely increased expenditures in coal and increased wear and tear of equipment, track, ties and roadbed. The statement that the extension has only added $200,000.00 to the gross earnings of the road is not correct, as I have shown in the foregoing brief.

A PREPOSTEROUS CONTENTION.

The petitioners' contention that the extension from Homestead to Knights Key only earned $33,000.00 is utterly preposterous. They seem to think that only business originating at each station represents the earnings of the road. If this argument is to prevail, then they would have a clear right to ask this Commission not to consider any part of the line north of the vegetable and pineapple territory in considering the rates over the entire line. But few or no pineapples are raised north of Rockledge and but few vegetables, and but few on the branch from Titusville to Enterprise, and still less from New Smyrna to Orange City Junction, and none on the branch from Jacksonville to Mayport.

I have shown in the foregoing brief that of over $403 000.00, exclusive of mail and express, receipts earned by the Florida East Coast Railway Company during the fiscal year ending June 30, 1910, something like $260,000.00 were directly caused

by that portion of the extension from Homestead to Knights Key.

I submit that the very contention and conflict existing now warrant the Commission in declining to reduce the rates or in requiring a reopening of the whole question so that the present value of the road can be ascertained.

SWORN FACTS AS TO VALUES.

In a suit now pending in the Circuit Court of the United States for the Southern District of Florida, in which
40 such men as Col. Elliott, Chief Engineer of the L. & N. R. R., and Major Huger, formerly General Superintendent of the Seaboard Air Line Railway, and other impartial and disinterested experts, including real estate men, builders, etc., testified to valuing the right of way and terminal and station properties and cost of replacing buildings, fixing the value in July, 1907, at an aggregate then of $17,767 295.00, to which the Florida East Coast Railway Company has since added an actual expenditure on capital account of $1,118,000.00 without including material and supplies and other properties owned by the Company and used by it in the business; but, without these, showing an aggregate of nearly $19,000,000.00 of present value confined exclusively to the line from Miami to Jacksonville and the branches north of Miami, and without touching the extension at all.

The petitioners correctly state the fact that the entire capitalization of the company up to June 30, 1910, was $33,000,000.00, but they omit to state the other fact that the book value of the road and its assets up to June 30, 1910, was $35,409 931.00; and this does not by any means represent the present value of the property.

For instance the cost of equipment is put in this report at $2,635,764.00. At the present time this equipment could not be replaced for less than $3,250,000.00. The brief of the petitioners is incorrect in its statement of facts, is a persistent attempt to dismember the system and an attempt to ignore the enormous increase of earnings directly resulting from this extension towards Key West, which has already oc-
41 curred, and without which the main line from Miami to Jacksonville and branches would not have earned anything like a reasonable profit.

I must not omit calling the attention of the Commission to another fact showing the one-sidedness of this brief. It takes what may be termed the gross profits from operating expenses so as to make a basis of claiming that the earnings from operation were $1,418,000.00 but ignores the $220,000.00 taxes, hire of equipment and rentals paid by the respondent

during the same year and which reduces the net earnings to $1,261,000.00, or to less than 4 per cent. on the cost of the road and equipment as shown by the report, or less than 6 per cent. on the cost of the road and equipment from Miami to Jacksonville with branches north of Miami and but about 5 per cent. on the present value of the same portion of the line.

ARBITRARILY FIXING VALUES.

Arbitrarily and without a word of evidence to sustain them the petitioners' counsel fix the value of the road at $14,000,000.00 including the extension to Homestead, whereas the foregoing brief shows that the actual cost of the road, according to the books of the company, for the main line from Miami to Jacksonville and branches north of Miami, was over $18,000,000.00. The petitioners have offered no evidence to show a less present value of the property than that claimed by the railroad company.

In the case of Ames vs. Railway Company (Circuit
42 Court) 64 Fed., 165, the Court says on page 177:

> "It is not easy to always determine the value of railroad property, and if there is no other testimony in respect thereto than the amount of stocks and bonds outstanding, or the construction account, it may be fairly assumed that one or other of these represents it and computation as to the compensatory quality of rates may be based on such amounts."

Nowhere has this decision ever been overruled, and the Florida East Coast Railway Company certainly objects to the petitioners arbitrarily placing their own valuation on the property to sustain their demand for decreased rates.

I submit also that the case of M. K. & T. R. Co., et al. vs. Interstate Commerce Commission (Mo.), 164 Fed., 645, has not the slightest application to the facts in this case. In that case the Court denied a preliminary injunction, saying on page 650:

> "Upon the evidence submitted we find that it tends in no inconsiderable degree to sustain some of the contentions of the railway companies upon subordinate questions of fact and that it tends in a lesser degree to sustain other contentions, but that it is clearly wanting in that certainty, fullness and persuasive force which ought to be, and is, essential to overcome the force of the commission's finding or determination upon which the order is based."

No such condition exists in this case.

THE PINEAPPLE REDUCTION.

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The argument of counsel in regard to the reduction in the pineapple shipments for the fiscal year ending June 30, 1910, is absolutely contrary to the facts. We have shown that for the fiscal year the acreage of pineapples absolutely increased over the preceding year. The reduced earnings of the road from pineapples was caused, first, by the freeze destroying the buds on a large number of the farms; and, next, by the order of the Interstate Commerce Commission. The acreage for the coming fiscal year is still about the same and yet the reports of the company show a still smaller fruitage than last year.

AN ABSURD PROPOSITION

I submit that the argument of counsel for petitioners on page 13 of the brief as to the effect of the proposed reduction in the rate on tomatoes is ludicrously absurd. A reduction of a little over 3c per crate, while imposing a loss upon the Florida East Coast Railway Company of at least $75,000.00 per annum, could not possibly affect the price of tomatoes a single cent per crate. This would amount to but a trifle over a half a cent per basket, there being six baskets to the crate, and would not enable the retailer to sell by the dozen or by the basket for any less than he now does. The only person benefited by the proposed reduction would be the purchaser of the carload, while the small purchaser and the retailer would have to pay exactly the same. How a reduction of freight of

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but a trifle over a quarter of a cent per dozen on tomatoes would increase the consumption is utterly beyond the ordinary reasoning faculty.

If I recollect correctly, some years ago, before the Interstate Commerce Commission was in existence, the Boston and Maine Railroad Company experimented with potatoes on the lines laid down in this brief and actually cut the rates in two, and the result was to so glut the markets with potatoes as to reduce the price in the consumer's market below the cost of freight. The late Frank Jones, who was at that time Chairman of the Board of Directors of the Boston & Maine Railroad Company, advised me of this fact. According to the argument of counsel, if the rate was reduced a trifle over 3c per crate of six baskets to the crate, the retailer would be able to sell the tomatoes at 25c per dozen or 45c per basket, or a total of $2.70 per crate, and the wholesaler would be willing to pay $2.10 for the crate. Why the retailer could not sell for 25c per dozen without the reduction of freight by a trifle over a quarter of a cent per dozen or why he would not pay $2.10 for a crate is not

stated, or why a reduction of the rate by a trifle over a quarter of a cent per dozen on tomatoes would stimulate the demand and induce persons to buy who would not buy if the present rates remained is beyond my comprehension and is not shown by any argument in the brief.

DEALING IN FUTURES.

I submit that anticipation of increase of traffic cannot be made the basis of rate reduction. When that increase
45 of traffic actually takes place and the cost and expenditures attending it are also ascertained, then and not until then can this Commission fairly, reasonably and intelligently determine whether or not existing rates should be disturbed. We have shown that the operating expenses have been and are too low and that the necessities of the road call for an increase of such operating expenses which will cover several years to come. Assuredly, unless this Company is to be deprived of all profit on its investment and the value of its property, it must be permitted to maintain existing rates at least until it is shown on proper proceedings that the rates are unreasonable. There has not been advanced one single word of argument to show why the rates on citrus fruits, vegetables and pineapples should be the same.

I have endeavored in the foregoing brief to show why they should not be the same. Beyond the words on page 4 of the petitioner's brief "citrus fruits should as a general rule take the same rate as pineapples" there is not a single word of argument to show why they should.

It is noticeable that in this brief counsel for petitioners appear to have abandoned the extraordinary contention that the rates on Florida fruit should approximate the California rate per ton per mile, the fact being too clear that the rate from California to almost all points is considerably higher per crate than from Florida and that, if the California fruit commands a higher price than the Florida fruit, that fact is not due to
46 any freight rates but to the blunders and mistakes in the marketing of the Florida fruit, the bad judgment in the picking and packing and very likely to some positive defect in the cultivation which renders the Florida product more easily spoiled than the California fruit or vegetables.

Respectfully submitted

(Signed) ALEX ST. CLAIR-ABRAMS.
Attorney and Solicitor for
Florida East Coast Railway Company.

Unreported Opinion No. 418.

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 1168.

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

vs.

ATLANTIC COAST LINE RAILWAY COMPANY ET AL.

No. 2566.

SAME

vs.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Decided June 20, 1911.

SUPPLEMENTAL REPORT AND ORDER OF THE COMMISSION

2

No. 1168.

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

vs.

ATLANTIC COAST LINE RAILWAY COMPANY ET AL.

No. 2566.

SAME

vs.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

SUPPLEMENTAL REPORT OF THE COMMISSION

Submitted June 7, 1911. *Decided June* 20, 1911.

Reasonable rates on citrus fruits from Jacksonville, Fla., and other Florida base points to points not enumerated in the former order in these cases established for the future.

William A. Glasgow, jr., and *Charles D. Drayton* for complainant.

R. Walton Moore for Alabama & Vicksburg Railway Company, Alabama Great Southern Railroad Company, and others.

O. E. Butterfield for New York Central Lines.

Alex. St. Clair-Abrams for Florida East Coast Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company and Chicago, Milwaukee & St. Paul Railway Company.
M. R. Waite for Baltimore & Ohio Southwestern Railroad Company and Cincinnati Hamilton & Dayton Railway Company.
James C. Jeffery for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.
C. B. Compton, for Louisville & Nashville Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

By its report and order of February 8, 1910, the Commission established rates on citrus fruits and pineapples from Jacksonville, Fla., and other base points to 11 points in central freight association and western trunk line territories which are enumerated in the order. 17 I. C. C. Rep., 552. The opinion stated that the defendants would be expected
3 to check in corresponding rates at other destinations within the same general territory. This has not been done, apparently for the reason that the carriers have not been able to agree among themselves as to the divisions of the rate when named, and the complainant now brings this supplemental petition for the purpose of obtaining from the Commission an order establishing rates to the points named in the petition.

The table below gives the destinations covered by this petition and states certain rates, designated as "old rates" and "new rates." Those rates are from Jacksonville and other base points to the destinations named and are in cents per box of 80 pounds, carloads, minimum 300 boxes.

We are of the opinion that the rates designated below as new rates are reasonable and ought not to be exceeded for the future, and that the old rates stated below are unreasonable to the extent that they exceed the new rates.

From Jacksonville, Fla., and other base points to—	Old rates, per box.	New rates, per box.	From Jacksonville, Fla., and other base points to—	Old rates, per box.	New rates, per box.

[216 points North and West; table omitted.]

The defendants will be ordered to establish rates not
4 exceeding those above found to be reasonable from Florida base points to the destinations named, but they may in lieu thereof establish and maintain rates from points of origin in Florida to such destinations which do not exceed the sum

of those rates which have already been approved by this Commission in No. 1168 from points of origin in Florida up to the base point and the rates prescribed in this opinion; that is, the carriers may if they so elect publish as one rate the gathering rate and the rate from the base point which we have approved.

5 ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 20th day of June, A. D., 1911.

Present:

JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,
CHARLES C. MCCHORD,
BALTHASAR H. MEYER,
Commissioners.

No. 1168.

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

No. 2566

SAME

vs.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

1. These cases coming on to be further heard by the Commission in regard to the reasonableness of rates on citrus fruits from Jacksonville, Fla., and other Florida base points to points not enumerated in the former order in these cases, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having

been had, and the Commission having, on the date hereof, made and filed a supplemental report containing its findings of fact and conclusions thereon, which said supplemental report is hereby referred to and made a part hereof, and having found that the hereinafter named defendants' present rates for the transportation of citrus fruits from Jacksonville, Fla., and other Florida base points to the points mentioned below, are unjust and unreasonable, and that the rates named in paragraph 3 hereof would for the future be just and reasonable:

6 2. *It is ordered,* That such of the hereinafter-named defendants as participate in the traffic be, and they are hereby, notified and required to cease and desist, on or before the 2d day of October, 1911, and for a period of not less than two years thereafter abstain, from exacting for the transportation of citrus fruits from Jacksonville, Fla., and other Florida base points to the points of destination mentioned in paragraph 3 hereof, their present rates.

3. *It is further ordered,* That such of the hereinafter-named defendants as participate in the traffic be, and are hereby, notified and required to establish, on or before the 2d day of October, 1911, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of citrus fruits in carloads, minimum 300 boxes to the car, from Jacksonville, Fla., and other Florida base points to the points named below, rates which shall not exceed the following, in cents per standard box of 80 pounds:

From Jacksonville, Fla., and other base points to—	Rates per box.	From Jacksonville, Fla., and other base points to—	Rates per box.

[216 points north and west; table omitted]

7 It is understood that said defendants may, in lieu of the rates herein prescribed, establish and maintain rates from points of origin in Florida to the destinations mentioned herein which do not exceed the sum of those rates which have already been approved by this Commission in Docket No. 1168, by order of February 8, 1910, from points of origin in Florida up to the base point and the rates prescribed herein; that is, the defendants may, if they so elect, publish as one rate the gathering rate and the rate from the base point which is prescribed herein.

8 4. *It is further ordered,* That a copy of this order be served upon each of the defendants hereto, [List of defendant railroads follows.]

5. *And it is further ordered,* That said defendants be,

and they are hereby, authorized to make effective upon three days' notice to the public and to the Interstate Commerce Commission, given in the manner required by law, the rates said defendants are by this order required to establish on or before the 2d day of October, 1911, in which event the tariffs must contain the notation that they are issued under the authority hereby granted, and must refer to the numbers of these cases.

1253

INTERSTATE COMMERCE COMMISSION
Washington

I JOHN H. MARBLE, SECRETARY OF THE INTER STATE COMMERCE COMMISSION, do hereby certify that the papers hereto attached are true copies of that portion of the record in the cases of R. Hudson Burr, Newton A. Blitch and Royal C. Dunn as Railroad Commissioners of the State of Florida against the Seaboard Air Line Railway, docket No. 3808; same against the Atlantic Coast Line Railroad Company, docket No. 3808, Sub No. 1, and Florida Fruit & Vegetable Shippers' Protective Association against the Atlantic Coast Line Railroad Company and others, docket No. 1168, itemized below, the originals of which are now on file and of record in the office of said Commission:

Petition of the Railroad Commissioners of the State of Florida, docket No. 3808, filed January 28, 1911.

Answer of Seaboard Air Line Railway to docket No 3808, filed February 28, 1911.

Petition of Railroad Commissioners of the State of Florida, docket No. 3808, Sub No. 1, filed January 28, 1911.

Answer of the Atlantic Coast Line Railroad to docket No. 3808, Sub No. 1, filed February 28, 1911.

Transcript of testimony in dockets Nos. 1168, 3808 and 3808, Sub No. 1, taken at Jacksonville, Florida, March 2, 1911.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed the seal of the Commission, this 30th day of March, 1912.

[Seal of the Interstate Commerce Commission.]

(Signed) JOHN H. MARBLE.
Secretary.

INTERSTATE COMMERCE COMMISSION

R. HUDSON BURR, NEWTON A. BLITCH AND ROYAL C. DUNN, AS RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA.

against

SEABOARD AIR LINE RAILWAY

Refer to Docket 3808 in your answer.

TO THE INTERSTATE COMMERCE COMMISSION

The petition of the above named claimants respectfully shows:

I.

That the complainants, R. Hudson Burr, Newton A. Blitch and Royal C. Dunn are the duly elected and qualified Commissioners of the Railroad Commission of the State of Florida; that said Commission was duly created and organized, and now exists under the laws of the State of Florida; that said Commissioners are authorized by said laws to complain to the Interstate Commerce Commission of matters which they think constitute a violation of the Act to regulate commerce and the Acts amendatory thereof or supplementary thereto, and that they have their office in the City of Tallahassee.

II.

That the defendant, Seaboard Air Line Railway, is a corporation chartered and existing under the laws of the State of Virginia and is a common carrier engaged in the transportation of property, including vegetables and citrus fruits between points in the State of Florida and points in other States, and as such a railroad company and common carrier is subject to the provisions of the Acts to Regulate Commerce approved February 4, 1887 and the Acts amendatory
2 thereof or supplementary thereto.

III.

That the rates charged by the said Seaboard Air Line Railway for the transportation of vegetables and citrus fruits from points in the State of Florida to points in other States are made up of a given rate from points in said State of Florida to other points known as base points in said State, that is to say, to Jacksonville and Yulee and of another rate from each of said base points to the several points of final destination in other States.

IV.

That the Seaboard Air Line Railway exacts for transporting vegetables, in either carload or less than carload shipments, when shipped to points in other States from each of the points in the State of Florida named in the schedule marked Exhibit "A" hereto attached as part of this petition, to the said respective base points, namely—Jacksonville or Yulee, as part of the whole interstate rate the respective sums set forth in the said schedule in the column headed Present Vegetable Rate C. L. and L. C. L.

That the said rates so exacted for transportation to the said base points of vegetables shipped to points in other States are each and all excessive, unreasonable and unjust and should not exceed the schedule or tariff of rates set forth in said Exhibit "A" in the column headed Proposed Vegetable Rate which provides different rates for carload and less than carload shipments.

V.

That the said Seaboard Air Line Railway exacts for transporting citrus fruits, in either carload or less than carload shipments when shipped to points in other States, from each of the points in the State of Florida named in the schedule marked Exhibit "A" aforesaid to the respective base points,
3 namely—Jacksonville or Yulee as part of the whole interstate rate the respective sums set forth in the said schedule in the column headed Present Orange Rate, C. L. and L. C. L.

That the said rates so exacted for transportation to the said base points of citrus fruits shipped to points in other States are each and all excessive, unreasonable and unjust and should not exceed the schedule or tariff of rates set forth in said Exhibit "A" in the column headed Proposed Orange Rate which provides different rates for carload and less than carload shipments and is intended to apply to all citrus fruits.

VI.

That the said Seaboard Air Line Railway operates several main lines of railroad with branches in the State of Florida and the said schedule of rates contained in the said Exhibit "A" has been prepared with reference to the points or stations on each of said main lines and branches. That each of said base points is a station on the line of the Seaboard Air Line Railway, which extends between it and the several points or stations named in the said Exhibit "A" as indicated therein.

VII.

That the complainants as Railroad Commissioners aforesaid,

in compliance with Section 2925 of the General Statutes of Florida have examined the rates on vegetables and citrus fruits so exacted as aforesaid by the Seaboard Air Line Railway and have urged upon the said railway company the propriety of making other and lower rates but without effect and therefore, as required by the said Statute, they hereby apply for relief.

Wherefore your petitioners pray that the defendant, the Seaboard Air Line Railway may be required to answer
4 the charges herein, and that after due hearing and investigation an order may be made commanding the said defendant to cease and desist from said violations of the Act to Regulate Commerce, and also ascertaining the lawful tariff of rates to be charged on the said vegetables and on the said citrus fruits from the said points in Florida to the base points when the shipments thereof are made to points in other States, and requiring the defendant to conform to the said tariffs so ascertained and for such other order as the Commission may deem necessary in the premises.

Dated at Tallahassee, Florida,
December 2, 1910.

(Signed) R. HUDSON BURR,
(Signed) NEWTON A. BLITCH,
(Signed) ROYAL C. DUNN,
Railroad Commissioners of the State of Florida

LOUIS C. MASSEY,
Counsel for Complainants.
Tallahassee, Fla.

EXHIBIT "A"; not printed.

[Indorsed: Interstate Commerce Commission; R. Hudson Burr et al, as R. R. Commissioners of Florida, *vs.* Seaboard Air Line Railway; Petition for Reduction of Rates; LOUIS C. MASSEY, *Counsel for Petitioners*, Tallahassee, Fla.]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 3808.

R. HUDSON BURR, NEWTON A. BLITCH AND ROYAL C. DUNN, AS RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA

vs.

SEABOARD AIR LINE RAILWAY

The answer of the Seaboard Air Line Railway to the petition filed in the above entitled proceeding.

For answer to said petition respondent says as follows:

1. While respondent has general knowledge of the creation and organization of the Railroad Commission of the State of Florida, it is without information enabling it to either admit or deny the accuracy of all the allegations contained in paragraph one of the petition.

2. The correctness of the allegations contained in paragraph two of the petition is admitted.

3. Respondent admits that certain proportional rates on vegetables and citrus fruits from points of production to base points are used in constructing through rates to final destinations as alleged in paragraph three of the petition, which will appear by reference to its lawfully published tariffs.

4. Respondent asks that reference be made to its lawfully published tariffs for the purpose of ascertaining whether the rates on vegetables set forth in the exhibit mentioned in paragraph four of the petition are correctly stated. Respondent denies the allegations contained in said paragraph to the effect that the said rates, or any of them, are to any extent whatever excessive, unreasonable and unjust, or otherwise in violation of any of the provisions of the Act to Regulate Commerce, or that the same should be reduced in the manner proposed in said paragraph, or in any manner whatever.

5. Respondent asks that reference be made to its lawfully published tariffs for the purpose of ascertaining whether the rates on citrus fruits set forth in the exhibit mentioned in paragraph five of the petition are correctly stated. Respondent denies the allegations contained in said paragraph to the effect that the said rates, or any of them, are to any extent whatever excessive, unreasonable and unjust, or otherwise in violation of any of the provisions of the Act to Regulate Commerce, or that the same should be reduced in the manner proposed in said paragraph, or in any other manner whatever.

6. The correctness of the allegations contained in paragraph six of the petition is admitted.

7. Respondent denies that there has been any such examination of the existing rates on vegetables and citrus fruits by the Railroad Commission of the State of Florida, or the individual members thereof, as justifies the complaint of the said rates or any of them, contained in the petition, or as warrants the attack thereon which is now being made.

And having fully answered, respondent prays to be hence dismissed, etc. (Signed) R. WALTON MOORE,

Special Counsel.

INTERSTATE COMMERCE COMMISSION

R. HUDSON BURR, NEWTON A. BLITCH, AND ROYAL C. DUNN, AS RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA

against

ATLANTIC COAST LINE RAILROAD COMPANY

Refer to Docket 3808 in your answer. Sub No. 1.

To the Interstate Commerce Commission:

The petition of the above named claimants respectfully shows:

I.

That the complainants, R. Hudson Burr, Newton A. Blitch and Royal C. Dunn, are the duly elected and qualified Commissioners of the Railroad Commission of the State of Florida; that said Commission was duly created and organized, and now exists under the laws of the State of Florida; that said Commissioners are authorized by said laws to complain to the Interstate Commerce Commission of matters which they think constitute a violation of the Act to Regulate Commerce and the Acts amendatory thereof or supplementary thereto, and that they have their office in the City of Tallahassee.

II.

That the defendant, Atlantic Coast Line Railroad Company, is a corporation chartered and existing under the laws of the State of Virginia and is a common carrier engaged in the transportation of property, including vegetables and citrus fruits between points in the State of Florida and points in other States, and as such a railroad company and common carrier is subject to the provisions to the Act to Regulate
2 Commerce approved February 4, 1887 and the Acts amendatory thereof or supplemental thereto.

III.

That the rates charged by the said Atlantic Coast Line Railroad Company for the transportation of vegetables and citrus fruits from points in the State of Florida to points in other States are made up of a given rate from points in said State of Florida to other points known as base points in said State, that is to say, to Jacksonville, High Springs and Gainesville and of another rate from each of said base points to the several points of final destination in other States.

IV.

That the

for transporting vegetables in either carload or less than carload shipments, when shipped to points in other States from each of the points in the State of Florida named in the schedule marked Exhibit "A" hereto attached as part of this petition, to the said respective base points, namely—Jacksonville, High Springs or Gainesville, as part of the whole interstate rate the respective sums set forth in the said schedule in the column headed Present Vegetable Rate C. L. and L. C. L.

That the said rates so exacted for transportation to the said base points of vegetables shipped to points in other States are each and all excessive, unreasonable and unjust and should not exceed the schedule or tariff of rates set forth in said Exhibit "A" in the column headed Proposed Vegetable Rate which provides different rates for carload and less than carload shipments.

V.

That the said Atlantic Coast Line Railroad Company exacts for transporting citrus fruits, in either carload or less than carload shipments when shipped to points in other
3 States, from each of the points in the State of Florida named in the schedule marked Exhibit "A" aforesaid to the said respective base points, namely—Jacksonville, High Springs or Gainesville as part of the whole interstate rate the respective sums set forth in the said schedule in the column headed Present Orange Rate C. L. and L.C.L.

That the said rates so exacted for transportation to the said base points of citrus fruits shipped to points in other States are each and all excessive, unreasonable and unjust and should not exceed the schedule or tariff of rates set forth in said Exhibit "A" in the column headed Proposed Orange Rate which provides different rates for carlaod and less than carload shipments and is intended to apply to all citrus fruits.

VI.

That the said Atlantic Coast Line Railroad Company operates several main lines of railroad with branches in the State of Florida and the said schedule of rates contained in the said Exhibit "A" has been prepared with reference to the points or stations on each of said main lines and branches. That each of said base points is a station on the line of the Atlantic Coast Line Railroad Company, which extends between it and the several points or stations named in the said Exhibit "A" as indicated therein.

VII.

That the complainants as Railroad Commissioners aforesaid, in compliance with Section 2925 of the General Statutes of

Florida have examined the rates on vegetables and citrus fruits so exacted as aforesaid by the Atlantic Coast Line Railroad Company and have urged upon the said railroad company the propriety of making other and lower rates but without
4 effect and therefore, as required by said Statute, they hereby apply for relief.

Wherefore your petitioners pray that the defendant, the Atlantic Coast Line Railroad Company, may be required to answer the charges herein, and that after due hearing and investigation an order may be made commanding the said defendant to cease and desist from said violations of the Act to Regulate Commerce, and also ascertaining the lawful tariff of rates to be charged on the said vegetables and on the said citrus fruits from the said points in Florida to the base points when the shipments thereof are made to points in other States, and requiring the defendant to conform to the said tariffs so ascertained and for such other order as the Commission may deem necessary in the premises.

Dated at Tallahassee, Florida, December 2, 1910.

(Signed) R. HUDSON BURR,
(Signed) NEWTON A. BLITCH,
(Signed) ROYAL C. DUNN,
Railroad Commissioners of the State of Florida.

LOUIS A. MASSEY.
Counsel for Complainants, Tallahassee, Fla.

Exhibit "A;" not printed.

[Endorsed: Interstate Commerce Commission. R. Hudson Burr, et al. as R. R. Commissioners of Florida *vs.* Atlantic Coast Line R. R. Company. Petition for Reduction of Rates. Louis C. Massey, Counsel for Petitioners, Tallahassee, Fla.]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 3808, Sub. No. 1

R. HUDSON BURR, NEWTON A. BLITCH AND ROYAL C. DUNN, AS RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA.

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

The answer of the Atlantic Coast Line Railroad Company to the petition filed in the above entitled proceeding.

For answer to said petition respondent says as follows:

1. While respondent has general knowledge of the creation and organization of the Railroad Commission of the State of Florida, it is without information enabling it to either admit or deny the accuracy of all of the allegations contained in paragraph one of the petition.

2. The correctness of the allegations contained in paragraph two of the petition is admitted.

3. Respondent admits that certain proportional rates on vegetables and citrus fruits from points of production to base points are used in constructing through rates to final destinations as alleged in paragraph three of the petition, which will appear by reference to its lawfully published tariffs.

4. Respondent asks that reference be made to its lawfully published tariffs for the purpose of ascertaining whether the rates on vegetables set forth in the exhibit mentioned in paragraph four of the petition are correctly stated. Respondent denies the allegations contained in said paragraph to the effect that the said rates, or any of them, are to any extent whatever excessive, unreasonable and unjust, or otherwise in violation of any of the provisions of the Act to Regulate Commerce, or that the same should be reduced in the manner proposed in said paragraph, or in any other manner whatever.

5. Respondent asks that reference be made to its lawfully published tariffs for the purpose of ascertaining whether the rates on citrus fruit set forth in the exhibit mentioned in paragraph five of the petition are correctly stated. Respondent denies the allegations contained in said paragraph to the effect that the said rates, or any of them are to any extent whatever excessive, unreasonable and unjust, or otherwise in violation of any of the provisions of the Act to Regulate Commerce, or

that the same should be reduced in the manner proposed in said paragraph, or in any other manner whatever.

6. The correctness of the allegations contained in paragraph six of the petition is admitted.

7. Respondent denies that there has been any such examination of the existing rates on vegetables and citrus fruits by the Railroad Commission of the State of Florida, or the individual members thereof, as justifies the complaint of the said rates or any of them contained in the petition, or as warrants the attack thereon which is now being made.

2 And having fully answered, respondent prays to be hence dismissed, etc.

(Signed) R. WALTON MOORE,
Special Counsel.

Transcript of testimony taken before Commissioner Prouty at Jacksonville Florida, March 2, 1911, in Docket Nos. 1168, 3808 and 3808, sub. No. 1.

(Not printed; by permission of the Court.)

INTERSTATE COMMERCE COMMISSION

Washington.

I, JOHN H. MARBLE, SECRETARY OF THE INTERSTATE COMMERCE COMMISSION, do hereby certify that the papers hereto attached are true copies of the original transcripts of the stenographer's notes of the testimony taken before said Commission on June 7, 1911, at Washington, D. C., in the cases of The Florida Fruit and Vegetable Shippers' Protective Association against the Atlantic Coast Line Railroad Company and others, docket No. 1168, and The Florida Fruit and Vegetable Shippers' Protective Association against the Alabama and Vicksburg Railway Company and others, docket No. 2566, motion of the Florida East Coast Railway Company to postpone hearing set at Washington, D. C., for Thursday, February 3, 1910, to some later date, motion of the Florida East Coast Railway Company to extend time for filing brief, and brief for complainant filed by F. M. Hudson and A. A. Boggs, counsel, the originals of which are now on file and of record in the office of said Commission.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the Commission this 18th day of May, 1912.

[SIGNED] JOHN H. MARBLE,
Secretary.

[Seal of the Interstate Commerce Commission.]

STENOGRAPHER'S MINUTES

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. 1168.

THE FLORIDA FRUIT AND VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

vs.

THE ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

At Washington, D. C., June 7, 1911.

Also Docket No. 2566.

[Not printed; by order of Court.]

MOTION TO POSTPONE HEARING

BEFORE THE INTERSTATE COMMERCE COMMISSION

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Florida East Coast Railway Company, et als.

1168

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Florida East Coast Railway Company, et als.

2566

And now comes the Florida East Coast Railway Company, by Alex. St. Clair-Abrams, its Attorney and Solicitor, and subject to the objections filed in said case, and moves the Interstate Commerce Commission to postpone the hearing set at Washington for Thursday, February 3rd, 1910, to some later date, not earlier than April 4th, 1910, on the following grounds:

1. Because it is impossible for this defendant to procure the evidence needed to sustain its rates on pineapples by Feb. 3rd, 1910.

2. Because, in order to meet the testimony introduced by the complainants at the hearing in Jacksonville on the 20th and 21st of December, 1909, it is necessary for this defendant to procure evidence of the cost in Cuba from gathering points to Havana, this expense not being included in the tables and evidence submitted by the complainants.

3. Because it will require from six to eight weeks' time to obtain this evidence.

4. Because the action of the Commission in rescind-

2 ing its order on the original case sustaining the rates of the Florida East Coast Railway Company is a surprise to this defendant, Counsel for complainants having disclaimed, at the hearing on December 20th and 21st, any purpose of disturbing the rates from points on the Florida East Coast Railway to Jacksonville.

5. Because, in order to sustain the contention of this defendant it is necessary to file evidence showing the difference in price between the Cuban and the Florida pineapples for a series of years, and it will require from thirty to fifty days to secure this evidence.

6. Because, to sustain the contention of this defendant that the present rates are reasonable, it will be necessary to show the number of crates of pineapples and vegetables shipped from points on the Florida East Coast Railway to Jacksonville for several years and the fluctuation in volume arising from cold and drought and floods, and it will require from forty to sixty days to procure this evidence.

7. Because, in order to sustain the contention of this defendant that the present rates are reasonable, it will be necessary for this defendant to put in evidence the actual cost of defendant's road up to the present time and the present value of the property, and it will require from thirty to forty days to collect and introduce said evidence.

8. Because, in order to sustain the contention of this
3 defendant that the existing rates are reasonable, it will be necessary to put in evidence tables showing the revenue derived by this defendant from pineapples and vegetables for each year for five years past and the cost to the defendant of gathering the same, and it will require at least thirty days to collect and prepare this evidence from the books of the company.

9. Because the supplemental complaint did not put in issue the rates on pineapples and vegetables from points on the Florida East Coast Railway to Jacksonville as admitted by Counsel for the complainants, and this defendant was, consequently, not given an opportunity to prepare said evidence and could not have prepared said evidence in the limited time given between the service of the notice and the 20th of December, 1909.

(Signed) ALEX ST. CLAIR ABRAMS,
(Signed) FRED'K C. BRYAN,

Of Counsel for Florida East Coast Railway Company.

AFFIDAVIT OF J. K. PARROTT.

INTERSTATE COMMERCE COMMISSION

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Florida East Coast Railway Company, et als.

1168

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Florida East Coast Railway Company, et als.

2566

STATE OF FLORIDA
COUNTY OF DUVAL

Personally appeared before me J. R. Parrott, who, being duly sworn, says that he is President of the Florida East Coast Railway Company; that he has been advised of the recent order of the Interstate Commerce Commission rescinding its decision No. 1168 relating to the rates on fruits and vegetables and pineapples and setting February 3rd at Washington for final hearing and putting in of testimony relating to the rates on pineapples from points on the line of the Florida East Coast Railway to Jacksonville, Florida.

Affiant further says that he is personally and thoroughly familiar with all the affairs of the Florida East Coast Railway Company; that it will not be practicable for the Florida East Coast Railway Company to collect and place before the Commission by February 3rd the testimony necessary to sustain its contention that the existing rates are reasonable and just; that this affiant, on receipt of the notice, immediately issued orders for the collection of the needed testimony, but cannot

2 obtain the same by the 3rd of February so as to do justice to this defendant.

Affiant further says that in order to fully advise the Interstate Commerce Commission of the true situation, it is necessary to put in evidence the cost at the gathering points in Cuba on pineapples to Havana, the shipping point to Knights Key; that this cost, which greatly adds to the expense of the Cuban grower, has been entirely omitted from the evidence submitted by the complainant before the Commission on the 20th and 21st of December, 1909; that, in order to further sustain the contention of this defendant, it will be necessary to collect from the books of this Company the number of crates of pineapples transported from points on the line of the Florida East Coast Railway to Jacksonville, Florida, for several years past and from Cuba via this Company's line; that to collect this evidence will require an examination of the records of this Company for five years past; that, in order to further sustain the contention of this defendant, it will be necessary to put in evidence the relative price of Cuban and Florida pineapples at the principal points for a series of years; and, to obtain this evidence, will require an examination of the prices current and trade journals for several years past; that it will also be necessary, as bearing upon the question of reasonable rates, to show the cost and present value of the Florida East Coast Railway Company up to the present time.

Affiant further says that a great deal of additional evidence will be required; that this defendant has no desire to delay the action of the Commission, but that it asks for a reasonable time in which to properly prepare its case for presentation to the Interstate Commerce Commission; that this affiant can collect and secure the needed testimony by the first week in
3 April, and will be ready by then for the final hearing; that, not being advised or informed that the decision of the Interstate Commerce Commission as rendered on case No. 1168 would be rescinded and the supplemental petition not involving any question of the rates of this affiant's company from points on the line of its road to Jacksonville, Florida, no preparations were made to meet the questions now raised by the present order of the Commission.

Affiant further says that this defendant contends and insists that the existing rates are reasonable, and respectfully asks an extension of time for the final hearing so as to enable this defendant to prepare and submit the evidence in its behalf to sustain its contention.

(Signed) J. R. PARROTT.
President of the Florida
East Coast Railway Company.

Sworn to and subscribed before me this 18th day of January, A. D. 1910.

(Signed) A. V. S. SMITH,
Notary Public, State at Large.

[SEAL]

My commission expires Nov. 19, 1911.

MOTION TO EXTEND TIME TO FILE BRIEF.

BEFORE THE INTERSTATE COMMERCE COMMISSION

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Florida East Coast Railway Company, et als.

Docket No. 1168

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Florida East Coast Railway Company, et als.

Docket No. 2566

And now comes the Florida East Coast Railway Company, by Alex. St Clair Abrams, its Attorney and Solicitor, and moves the Interstate Commerce Commission to extend the time for filing Brief in the above-entitled causes to the twenty-fifth day of January, A. D. 1910, on the following grounds:

1. That the testimony taken at Jacksonville on the 20th of December, 1909, was not received by Counsel until the 4th of January.

2. That it will be impossible to prepare Brief and have the same printed in time to file in Washington on the 12th of January, A. D. 1910.

(Signed) ALEX. ST. CLAIR ABRAMS,

Attorney and Solicitor for
Florida East Coast Railway Company.

Docket 1168

BEFORE THE INTERSTATE COMMERCE COMMISSION

Florida Fruit and Vegetable Shippers' Protective Association, et al,

vs.

Florida East Coast Railway Company et als.

BRIEF FOR COMPLAINANT

Filed May 20, 1911.

STATEMENT OF THE CASE

F. M. HUDSON & A. A. BOGGS,
of Counsel for Complainants

Docket No. 1168

BEFORE THE INTERSTATE COMMERCE COMMISSION

Florida Fruit and Vegetable Shippers' Protective Association, et al.

vs.

Florida East Coast Railway Company et als.

SUPPLEMENTARY PETITION.

BRIEF OF HUDSON & BOGGS, OF COUNSEL FOR COMPLAINANT.

STATEMENT OF THE CASE.

The object sought by this Supplementary Petition, is to equalize the rates on citrus fruits and pineapples from points on the Florida East Coast Railway to Jacksonville, for interstate shipment, with those already found just and reasonable for pineapples over the same line.

This controversy is of long standing, the original complaint being filed in 1907 and the decision of the Commission being rendered in June, 1908 (14 I. C. R., 464.)

In that report and order, certain reductions were made in the citrus fruit and pineapple rates from base points to eastern destinations, but is was specifically held that the rates from points of production to base points over the various lines were not excessive. In the same report, page 508, the Com-
2 mission held that as a general rule, citrus fruits and pineapples should take the same rate.

Thereafter, the same complainants filed another petition, No. 2255, against the same carriers, and others, specifically attacking rates on citrus fruits and pineapples from base points to destinations in the middle West, and rates on vegetables to eastern destinations. In this connection, we would point out that in case No. 1168 the original decision practically went by default as far as she shippers along the East Coast were concerned, as that entire territory was represented by only one witness, a fact which was used in argument by defendants to show that there was no dissatisfaction with the existing rates along that line. In No. 2255, however, the people of the East Coast had a more thorough understanding of the powers of the Commission and were represented by an organization 1,000 strong, and on the showing made in the latter case, the Commission was so impressed with the actual condition of affairs

proved to exist in that territory, that, of its own motion, it reopened the decision in case No. 1168 so far as it applied to fruit and vegetable rates on the Florida East Coast Railway, and set the case for testimony and argument in Washington on February 3, 1910, "with special reference, however, to pineapples." Upon the original testimony, then, as supplemented by that taken at Washington in February, 1910, showing conditions as they existed at the last-named date, the Com-

3 mission made its order reducing the rates on citrus fruit and pineapples over the Florida East Coast Railroad and subsequently, upon complaint by the carriers that they did not have sufficient notice that citrus fruits were involved in the hearing, the last-mentioned order was modified so as to exclude citrus fruits and finally made effective only as to pineapples.

It seemed to your petitioners, therefore, that the question of citrus fruits and vegetables having been formerly reopened in case No. 1168 and still remaining unadjudicated, the speediest, and, from a procedural point of view, the most correct means of getting these rates settled was by supplemental petition, setting up certain changes in the situation since the time the original petition No. 1168 was filed, and especially the order of the Commission on pineapple rates, and praying that citrus fruits and vegetables be reduced to a corresponding extent. Reasoning from an analogy with equity procedure, we supposed that we could allege and prove, under a supplemental petition, facts and conditions arising since the filing of the original petition. Had this not been our belief, we should have filed an original petition to the same effect, being satisfied of our ability to prove that many changes had occurred in the conditions operating as factors in rate making, which would make our case at the present time far stronger than it could have possibly been made in 1907 and 1908, and at the same time clearly vindi-

4 cating the wisdom and correctness of the Commission's former orders reducing rates as resulting, in many respects, in distant benefits to the carriers as well as to the shippers.

As regards the issues raised by the Supplemental Petition our position is as follows:

1. It is a matter of established and published law that rates on pineapples in excess of those fixed in the Commission's order in 1911 are unjust and unreasonable.

2. Citrus fruits should as a general rule take the same rate as pineapples.

3. The pineapple rates established by the Commission when reduced to a carload earning basis, would serve to a large extent

as a measure of correctness for the vegetable rates, and that rates resulting in an earning per carload to the carrier higher than those fixed for pineaples should be approved by the Commission only as they might be shown to be justified by variation in the rate factors affecting one and not the other.

Upon this theory of the case the facts material and relevant to be shown at the last hearing were reduced to narrow limits and in our view the burden of proof rested upon the respondents.

We duly presented this view of the case to the Commissioner presiding, but while he seemed to be impressed with the force of the proposition, he did not at that time make a positive ruling in support of it, and we therefore deemed it pru-
5 dent to prove the case in our own favor as though the burden were upon us.

We had examined only one witness, however, when the Commissioner ruled that the decision should be on the basis of the record already made, and that no testimony relative to present conditions of the traffic of the carrier or of the shipper would be relevant. While he did not so specifically rule, we presumed that this implied an acceptance of our proposition as to the effect of the decision on the pineapple rate upon the questions herein at issue, and we shall make our argument from the record chiefly with a view of pointing out wherein the respondent has failed to make a showing justifying any higher rate on citrus fruits and vegetables than on pineapples, respectfully insisting, however, that if this view as to the scope of the issues and proof shall not be adopted by the Commissioner, we shall be given an opportunity to prove affirmatively, as we can easily do, that the existing rates on citrus fruits and vegetables over the Florida East Coast Railway are, in themselves considered, unreasonable, unjust, oppressive, and in their unavoidable result disastrous alike to shippers, carriers and the public.

ABSTRACT OF EVIDENCE.

6 The present interstate rates on citrus fruits and vegetables are the same as the local rates.
Beckwith 19.

The Florida East Coast Railway Company receives as much for this through traffic as it does for these commodities when shipped in carloads to South Jacksonville, and there unloaded and delivered in lighters at the carriers' expense to the steamship lines operated out of Jacksonville.

Beckwith 18.

Florida East Coast rates are higher than those now in effect on other lines operated in Florida.

Beckwith 20.

The percentage of freight earning to the total earning of the Company has grown within four years from fifty to eighty per cent.

Beckwith 20.

The anticipated movement for the season now in progress is far greater than in the past.

Burr 26.

The existing carload movement on vegetables is 520 crates or 21,000 pounds.

Burr 33, 35.

The present tariff of fruit and vegetable rates has not been approved for interstate movement by the Florida Railroad Commission.

Burr 36.

The reasons for permitting higher rates on the Florida East Coast Railway than on the other Florida systems
7 no longer exist.

Burr 41.

There has been and is a great and steady growth in the citrus industry on the East Coast of Florida.

Burr 43.

Last season's tomato crop of the East Coast Section was about 5,000 cars, over 2,000,000 crates.

Beckwith 60.

Defendant admits that it expects the growth in tonnage to continue.

Beckwith 132.

Practically the entire freight business of the Railroad Company is north of Homestead.

Beckwith 63.

The cost of maintenance of track and structure is low.

Beckwith 78.

The gross and net earnings of the Company are relatively high.

Beckwith 79.

Carload earnings on citrus fruits and vegetables are relatively far higher than on lumber and other commodities, and respondent admits that they are handled as cheaply.

Beckwith 125.

Earnings per ton on citrus fruits and vegetables are far higher than defendant's average per ton on all freights.

Beckwith 329.

The extension over the Keys is claimed to add only
8 $200,000 to the gross earnings of the road.

Beckwith 139.

Citrus fruits and vegetables move for long distances in trainloads of 45 cars per train, and but for the shortness of defendant's sidings, could move in even longer trains.

Beckwith 148.

ARGUMENT.

The analysis of the record at this last hearing shows a failure of the respondent to prove any just cause for higher rates on citrus fruits per crate and vegetables per ton, or per car, than on pineapples. In fact nearly everything that was said in their behalf at the hearing in justification of their existing rates, would operate with equal force as to the pineapple rate which is *res adjudicata*. It is true that they asserted in their answer that the existing rates on citrus fruits and pineapples have been approved by the Florida Railroad Commission, by which they undertook to raise a presumption of reasonableness. Apart from the legal question, however, as to whether the approval by the State Railroad Commissioners of an interstate rate would raise any presumption, Mr. Burr's explanation of the matter shows that they approved the existing rates merely as local rates, and in no sense approved them as interstate rates, and Mr. Beckwith, the Vice-President of the Rail-
9 road Company, who participated in the conference in which the rates were said to have been approved, did not take the stand to rebut Mr Burr's statement, and in fact they introduced no proof in support of this defense except the written order of the Florida Commission which speaks for itself in support of Mr. Burr's explanation.

Mr. Beckwith stated that a considerable part of the vegetable traffic moved in combination ventilator and refrigerator cars for which his company paid the owners of the equipment a mileage of three-fourths of a cent. This statement was not made under oath, but accepting it as testimony, and taking it with his statement that their average haul on vegetables was 250 miles, we would have here a difference of $3.75 per car, if all the vegetables moved in such equipment, and none of the pineapples did, and if no deduction be made for the saving of wear and tear on equipment and interest on its value, which the respondent gains by using rented equipment in place of its own. But as a matter of fact, they do not show what percentage of the vegetables, citrus fruits, and pineapples, respectively, move in such equipment, and we insist that it is impossible to determine from their showing that any allowance should be made to them on this account.

They state that they have made extensive reductions in their formerly existing rates on this traffic, but they do not pretend that they have reduced the citrus fruits and vegetables
10 rates to a parity with those found just and reasonable for pineapples, and in fact they admit that they have not done so. As to the shrinkage of earnings which they claim will result from these reductions, their statement appears ex-

aggerated. They claim, for instance, in their exhibit No. 2 that the reduction we asked for on vegetables would produce a further reduction of 35.3 per cent of their gross revenue from their traffic. This is manifestly erroneous. Taking their average haul of 260 miles and reducing the rate at that point to a parity with pineapples, the vegetable minimum being 420 crates, the rate being 18 cents, while the pineapple rate on a 300 crate minimum is 20 cents, is it at once apparent that the reduction for which we ask would amount to only three and eight-tenths cents, or 21 per cent reduction, and on a similar calculation at various other points of actual movement, we do not find that the reduction would amount to thirty-five per cent anywhere. Taking the average haul of citrus fruits at 180 miles as stated by Mr. Beckwith, the reduction there would amount to about four cents, or about nineteen per cent, instead of twenty-three as stated. It becomes apparent moreover by an analysis of their present schedule of rates, that the chief trouble in them is that the respondents have utterly failed to conform to the Commission's opinion as to the increase for distance, their rate on citrus fruits for a distance of 50 to 60 miles being identical with that established by the Commission for
11 pineapples and that on vegetables on the carload basis being only about nine per cent higher, but instead of advancing rates by one cent as does the Commission, at intervals of 20 to 25 miles, they advance them at ten-mile intervals, and instead of making this advance by one-cent stages, they have arbitrarily jumped four cents on a ten-mile interval from 160 to 170 miles on the citrus fruit trade.

Assuming the Commission's order in the instant case to be correct, and, upon all rules of precedure, we must assume it, respondents' system of distance advances must be wrong, at least in the absence of any showing of special conditions which will justify it as affecting citrus fruits and vegetables and not affecting pineapples. We submit in all earnestness that respondent has utterly failed to show the existence of any such conditions. The Commission's scale of distance advances and that of respondent cannot possibly both be right, and it follows from this, inevitably, that respondent's rates are wrong to the degree by which they exceed those of the Commission.

The fact that the reductions already made are very considerable at some points, cannot avail in proof that the rates now in effect are reasonable, for again if the Commission's rates on pineapples are correct, and their correctness is not here in issue, then the respondent's rates are not just and reasonable until they have been reduced to substantial parity with
12 those of the Commission, unless differences are shown to

exist in the factors entering into rate making between this traffic and that in pineapples. A careful analysis of this record fails to show the existence of such differences.

Respondents appear to regard the alleged fact that the vegetable traffic makes up 35 per cent of their freight revenue as a difference of condition between this and pineapple traffic. It is not apparent how they reach these figures unless the movement is actually heavier than they have stated elsewhere, but even admitting the premises we cannot see the logic of their conclusion. As the Commissioner presiding at the hearing, it would rather seem to emphasize the point that if the present rate is actually too high, the carrier's own self interest would combine with justice to demand reduction, at least to the point where maximum tonnage would be reached.

The fact that a small reduction in rates can act as a powerful factor in widening markets, is clear on careful study, and the respondent's argument that such reduction as we seek would be absorbed by the middleman, is not conclusive even if true; for the middleman is a necessary factor. He operates in the margin between the price at which he can buy delivered and that which his customers will pay, and he necessarily stays out of the game and with-holds his services until this margin is wide enough to make his profit. Until he can see a sufficient
13 profit to justify his order the market lags. To illustrate this point, let us take a city of say, 50,000 population and having a carload freight rate of sixty cents per crate. A small fraction of the population will consume tomatoes with little regard to price, but their demands are soon satisfied, and while prices are high few sales are made and there is not sufficient market to justify direct carload shipments. The jobbers who know their market, however, understand that when the price comes down to say 25 cents per dozen, or 45 cents per dozen, or 45 cents per basket, the consumption can be increased many fold. The margin upon which he is willing to operate is 25 cents per crate of six baskets, while the retailer will not give more than $2.10 per crate for tomatoes which he expects to sell at the above figures. The jobber's problem is, therefore, simple arithmetic. When f. o. b. price plus his margin of 25 per cent comes down to $2.10 he will order tomatoes by the carload, possibly two or three carloads per week but as long as the total rises above $2.10 he orders none.

For a thorough understanding of the importance of the middleman's activities in increasing the consumption of a commodity, it is necessary to bear in mind that the actual determinant of consumption is stimulated demand. If the consumption of safety razors, straw hats, and encyclopedias is not multiplied many fold by advertising, display, and solicitation,

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the modern science of selling is at fault. Vegetables
14 not being necessaries of life, are subject to the same laws, and a community which today consumes a dozen crates and is satisfied, may tomorrow take 100, simply because the trade agencies are busy in stimulating the demand, and it is very clear that reductions in the delivered price to the middleman entirely too small to affect the retail sale price does widen the market in this way, because the stimulation of demand and the consequent increase in consumption are out of all proportion to the magnitude of the price reduction.

The interests of the railway company as well as those of the producers of this territory and of the public at large demand that the rates upon this traffic shall be such as to provide for all legitimate expansion in production. The industry has increased from very small proportions to about 5,000 carloads of vegetables last year, the record shows that a heavy increase was anticipated this year and it is a matter of common knowledge that this increase has actually taken place in the season now in progress. The territory served by the respondent is capable of supplying the wants of the entire United States, and the increase in production and tonnage will be limited only by the possibility of selling the product, and the revenue of the Company must in the end gain by a reduction in freight rate to the point where the maximum of production can be maintained.

It seems hardly necessary to deal with the respondent's statement that it ought to spend more money on main-
15 tenance of track and structures. This is in no sense a condition of variance between pineapple traffic and that in fruits and vegetables. Moreover the margin of profit of the Company is abundantly large to permit an increase in this direction without cutting down the net earnings too low. There is no reason, however, for the very heavy outlays in this behalf on a railroad like that of the respondent running in a straight line over a flat country and having practically no grades, cuts or high embankments, and very few gentle curves.

We note with admiration respondent's argument that the loss of revenue it has sustained on pineapples tends to justify the existing rates on vegetables. This record abundantly shows that the pineapple industry has been paralyzed, in fact, almost wiped out of existence by the excessive rates of the defendant Company. It was shown before this commission that prior to its order made in April 1910, many growers had been forced to give up the pineapple business and that the losses of the preceding two years had so crippled the industry that few of the fields were fertilized and many hundreds of acres were entirely abandoned. Nor can this be explained by the occurrence of a freeze in the winter of 1908-1909, for such freezes

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had repeatedly occurred before, but without causing more than a temporary check of growth in the industry. The reduction ordered by the Commission in April, 1910, has proved
16 helpful to those growers who had the courage and resources to continue to fertilize and care for their plantations, but it could not call to life in a day the fields which had been devastated by the respondent's policy. To urge this havoc as a justification of oppressive rates on tomatoes and citrus fruits is paralleled only by the effrontery of the youth convicted of the murder of his father and mother, who appealed to the mercy of the court because he was a poor orphan.

The condition of the carrier abundantly warrants the relief prayed in this petition. Defendant's net earning from operation last year was $1,418,000. The face value of its capitalization was $33,000,000, on which the apparent earning is only about 3½ per cent, but it is clearly apparent that this entire earning was produced by the main line between Jacksonville and Homestead. Respondents allege that the so-called Over-sea Extension has added $133,000 to the gross passenger, and $74,000 to the gross freight revenues of the mail line. Conceding this to be true, in the sense most favorable to the carrier, that is, that the main line carried $187,000 worth of business originating or terminating below, and adding thereto $33.000 which would be the sum actually earned south of Homestead on the same traffic and mileage basis, we have then a total gross earning of the Extension amounting to about $220,000 against which must be charged the entire operating expenses of the Extension, and its due share of the operating expenses of
17 the main line. It is plain that this can produce nothing but a deficit, and indeed the contrary is not asserted by the respondent. The entire earnings from operation of $1,418,000 is, therefore, made by the mainland portion of the line, which had been completed and was in operation for two years all the way to Homestead before a charter was granted for an extension over the Keys. The line to Homestead cost, according to the findings of the Commission last April, $12,000,000, its capitalization being $16,000,000, of which $4.000,000 was water.

Counsel for the deefndant alleges in argument that considerable sums have been invested in betterments since these figures were compiled. There is no proof of this in th record and it was asseverated with equal fervor that every penny of the capitalization of the road represented actual cost, until proof showed otherwise, but even allowing an increase of $2,000,000 for betterments, and valuing the road at $14,000 000, it shows an earning of 10 per cent. We do not contend that the fact that the carrier is earning 10 per cent on its investment is in

itself sufficient reason for reducing rates The building of the Florida East Coast Railway was a great work, and a mighty contribution to the public welfare. It deserves liberal compensation. But we submit in all earnestness that where rates are shown to be unduly high in comparison with those charged by other carriers for similar service, when they are
18 shown to be oppressive and burdensome upon industry, restrictive to the expansion of traffic, and, in themselves considered highly remunerative to the carrier, the Railway Company cannot excuse or defend them on the ground of its own poverty, while it is earning a net 10 per cent on its investment.

But respondent contends that they have a right to demand that this mainland traffic shall earn them a profit on the cost of the entire line including the Oversea Extension, seventy-five mile stretch of road built in defiance of the weight of expert judgment, at a stupendous cost, and not destined in any way to serve the uses or further the interests of the territory from which the railroad's present revenues are derived; built indeed for a purpose the successful achievement of which cannot but work injury to the industries which it insists must be burdened with its cost. Its propector has made bold and audacious speculation. He has hazarded a great fortune in backing his judgment against expert opinion. Geographically this extension connects with the main line of the Florida East Coast Railway; but economically it is as foreign to all the business interests of the people of the East Coast of Florida as though it were built across Behring Sea If it proves successful, the glory and material rewards will belong to Mr. Flagler. If it is a failure, is it just that the people of the East Coast of Florida and their children's children shall bear the burden of a colossal folly which they neither committed nor sanctioned.

19 We hardly deem it necessary to argue this proposition at length as a matter of law, as the injustice of the contention of respondent in this respect was evidently clearly apparent to the Commissioner presiding at the hearing. We find it amply supported moreover by high authority in the courts.

M. K. & T. Railway Company vs. Interstate Commerce Commission, 164 Fed. Rep., 646, 648.

"To be just and reasonable, within the meaning of the constitutional guaranty, the rates must be prescribed with reasonable regard for the cost of the carrier of the service rendered and to the value of the property employed therein; but this does not mean that regard is to be had

only to the interests of the carrier, or that the rates must necessarily be such as to render its business profitable; for reasonable regard must also be had to the value of the service to the public. And where the cost to the carrier is not kept within reasonable limits, or where for any reason its business cannot reasonably be so conducted as to render it profitable, the misfortune must fall upon the carrier, as would be the case if it were engaged in any other line of business."

In Re Arkansas Railroad Rates 169 Fed Rep. 720, 733.

"Must the public guarantee the railroads a certain income on their investment, regardless of the condition of the country traversed, or whether bad judgment was exercised in the selection of the route? We do not think so."

Southern Pacific Railway Company vs. Bartine, 170 Fed. 725, 767.

20 "It does not necessarily follow that a schedule of maximum rates fixed by law is confiscatory because it fails to yield a reasonable return on the investment, above taxes, operating expenses, and interest on the indebtedness. The rates must be reasonable to the company, but they must, in any event, be reasonable to the public. If a railroad is built into a new, sparcely settled territory with a view of serving a large future population and developing business, the Constitution does not require the few people and the small business of the present time to pay rates which will yield an income equal to the full return to be gathered when the country is populated and business developed to the full capacity of the road. Beall & Wyman R. R. Rate Reg. 343, 344, 462; Capital City Gaslight Co. vs. Des Moines (C. C.) 72 Fed. 829, 844; Boise City I. & L. Co. vs. Clark, 131 Fed. 415 65 C. C. A. 339; Water Dist vs. Water Co., 99 Me. 371, 376, 59 Atl. 537

Regan vs. Farmers Loan & Trust Company 154 U. S 412.

"It is unnecessary to decide, and we do not wish to be understood as laying down as an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable. And yet justice demands that every one should receive some compensation for the use of his money or property, if it

be possible without prejudice to the rights of others. There may be circumstances which would justify such a tariff; there may have been extravagance and needless ex-
21 penditure of money; there may be waste in the management of the road; enormous salaries; unjust discrimination as between individual shippers, resulting in general loss. The construction may have been at a time when material and labor were at the highest price, so that the actual cost far exceeds the present value The road may have been unwisely built, in localities where there is no sufficient business to sustain a road. Doubtless, too, there are many other matters affecting the rights of the community in which the road is built, as well as the rights of those who have built the road."

Also familiar cases of Covington vs. Sanford 164 U. S. 578 and Smyth vs. Ames 169 U. S. 466.

We insist, therefore, that there is no ground in logic, in law, or in economics, for loading this Oversea Extension of the respondent company upon our shoulders or for mingling its affairs with our own. Our rates must be reasonable in view of the conditions surrounding, and the property devoted to our service The rates on pineapples fixed by the Commission are still burdensome to the industry to some extent, but we fully understand that the Commission cannot, in making its rates consider only our wishes and profits, and we realize that under all the circumstances we have received in that respect substantial justice. We only ask now that the rates on citrus fruits and vegetables be harmonized with those on pineapples and we believe that if this result can be secured, the growth and development of these great industries may be maintained and that the carrier may ultimately be compensated by an increase in its business and prosperity far more than enough to offset its apparent immediate loss of revenue.

Respectfully submitted,

F. M. HUDSON, and
A. A. BOGGS,
of Counsel for Petitioners.

INTERSTATE COMMERCE COMMISSION
Washington.

I, JOHN H. MARBLE, SECRETARY OF THE INTERSTATE COMMERCE COMMISSION, do hereby certify that the papers hereto attached are true copies of order, exhibits and correspondence entered or filed in the cases of Florida Fruit and Vegetable Shippers' Protective Association against Atlantic Coast Line Railroad Company and others, docket No. 1168, and Florida Fruit and Vegetable Shippers' Protective Association against Florida East Coast Railway Company and others, docket No. 2566, as hereinafter itemized, the originals or carbon copies of which are now on file and of record in the office of this Commission, to-wit:

Order entered by Interstate Commerce Commission on November 16, 110, permitting suplemental petition.

Florida East Coast Railway exhibits Nos. 1 to 8, both inclusive, filed at the hearing on March 18 and 19, 1908, at Jacksonville, Florida.

Defendants' exhibits Nos. 2 and 4, filed at the hearing on February 3 and 4, 1910, at Washington, D. C.

Letter from Confidential Clerk Ward Prouty to Alex. St. Clair-Abrams, Jacksonville, Florida, dated January 10, 1910.

Letter from Alex. St. Clair-Abrams to Hon. Charles A. Prouty, Interstate Commerce Commission, dated January 15, 1910.

Letter from Frederick C. Bryan to the Interstate Commerce Commission, dated January 20, 1910.

Letter from Alex. St. Clair-Abrams to Hon. Charles A. Prouty, Interstate Commerce Commission, dated January 20, 1910.

Letter from Alex. St. Clair-Abrams to C. A. Prouty, Interstate Commerce Commission, dated January 27, 1910.

Letter from Commissioner Charles A. Prouty to Alex. St. Clair-Abrams, dated January 27, 1910.

Letter from Commissioner C. A. Prouty to Fred'k C. Bryan, dated January 27, 1910.

Telegram from Commissioner C. A. Prouty to Alex. St. Clair-Abrams, dated January 27, 1910.

Letter from Commissioner C. A. Prouty to Alex. St. Clair-Abrams, dated January 27, 1910.

Letter from Alex. St. Clair-Abrams to Hon. C. A. Prouty, Interstate Commerce Commission, dated February 6, 1910, with proposed amendment to argument.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed the seal of the Commission, this 23rd day of May, 1912.

JOHN H. MARBLE,
Secretary.

[Seal of Interstate Commerce Commission.]

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 16th day of November, A. D. 1910.

Present:
MARTIN A. KNAPP
JUDSON C. CLEMENTS
CHARLES A. PROUTY
FRANCIS M. COCKRELL
FRANKLIN K. LANE
EDGAR E. CLARK
JAMES S. HARLAN
Commissioners.

No. 1168.

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Atlantic Coast Line Railway Company, et al.

ORDER PERMITTING SUPPLEMENTAL PETITION.

Upon consideration of the record in the above-entitled case, and pursuant to motion made for that purpose by the complainant herein,

It is ordered: That the supplemental petition of the Florida Fruit and Vegetable Shippers' Protective Association against the Florida East Coast Railway Company asking a reduction in rates on citrus fruits and vegetables from points of production on the line of the Florida East Coast Railway to Jacksonville, Florida, when for beyond, be, and the same is hereby filed;

It is further ordered: That a copy of this supplemental petition be served upon the defendant named therein, and that a copy of this order be served upon each of the parties to said case.

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FLORIDA EAST COAST RAILWAY.

5 Exhibit 1 (Page 846).

INTERSTATE COMMERCE COMMISSION.

Florida Fruit and Vegetable Shippers' Protective Association,

vs.

Florida East Coast Railway Company, et al.

Copies of Pleadings Filed in Case of The Trust Company of America, a Corporation, etc.,

vs.

Florida East Coast Railway Company, a Corporation, etc.; Florida Railroad Commissioners, et al.; and Certified Copies of Injunctions.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

The Trust Company of America, a corporation duly chartered and existing under the laws of the State of New York,

vs

Florida East Coast Railway Company, a corporation duly chartered and existing under the laws of the State of Florida; Newton Blitch, R. Hudson Burr, and John L. Morgan, as Railroad Commissioners of the State of Florida, duly charteredand qualified, and performing the duties of such Railroad Commissioners; William H. Ellis, Attorney General; Augustus G. Hartridge, State Attorney for the Fourth Judicial Circuit of Florida; Augustus V. Long, State Attorney for the Eighth Judicial Circuit of Florida, and John C. Jones, State Attorney for the Seventh Judicial Circuit of Florida.

Bill to declare unreasonable and unjust certain rates prescribed by the Railroad Commissioners of Florida for passenger fares; to declare unreasonable and unjust certain orders of the Railroad Commission of Florida establishing agencies; to declare the same taking property without just compensation; to enjoin enforcing said rates and orders; to enjoin the prosecution of and inflicting of fines on the Florida East Coast Railroad Company; for the protection of complainants' trust and for injunction and relief.

IN CHANCERY:

To the Honorable, the Circuit Judge of the United States for the Southern District of Florida, in Chancery sitting:

The Trust Company of America, a corporation duly chartered and existing under the laws of the State of New York, brings this its Bill against the Florida East Coast Railway Company, a corporation duly chartered and existing under the laws of the State of Florida; Newton Blitch, R. Hudson Burr, and John L. Morgan, as Railroad Commissioners of the State of Florida, duly elected and qualified, and performing the duties of such Railroad Commissioners; William H. Ellis, Attorney General; Augustus G. Hartridge, State Attorney
6 for the Fourth Judicial Circuit of Florida; Augustus V. Long, State Attorney for the Eighth Judicial Circuit of Florida; and John C. Jones, State Attorney for the Seventh Judicial Circuit of Florida.

And thereupon your orator Complains and says:

RESIDENCE OF COMPLAINANT.

1. That your orator is a corporation duly existing and created by the laws of the State of New York and is a citizen and resident of the said State; and has its principal office and place of business in the City of New York, State aforesaid.

RESIDENCE OF DEFENDANTS.

2. That the defendant, the Florida East Coast Railway Company, is a corporation duly chartered and existing and created by and under the laws of the State of Florida and having a line of railroads wholly within the State of Florida, and doing business in the said State; that the defendants, Newton V. Blitch, R. Hudson Burr, and John L. Morgan, are each and every one of them Railroad Commissioners of the State of Florida, and constitute a Board of Railroad Commissioners of the State of Florida; that the defendant, R. Hudson Burr, is the Chairman of said Board of Railroad Commissioners; that each and every one of them is a resident of the State of Florida, having his and their principal place of business at Tallahassee, Florida; that the defendant, R. Hudson Burr, is a resident of Dade County, Florida; that the defendant, Newton V. Blitch, is a resident of Levy County, and that the defendant, John L. Morgan, is a resident of Hamilton County, Florida.

Your orator further says that the defendant, William H. Ellis, is a resident of Gadsden County, Florida, and is the Attorney General of the State of Florida, and has his principal place of

business in Tallahassee, Florida; that the defendant,
7 Augustus G. Hartridge, is State Attorney for the Fourth Judicial Circuit of Florida, and is a resident of Duval County, Florida; that the defendant. Augustus V. Long, is State Attorney for the Eighth Judicial Circuit of Florida, and is a resident of Bradford County, Florida; that the defendant, John C. Jones, is State Attorney for the Seventh Judicial Circuit of Florida, and is a resident of Orange County, Florida.

CHARTERED AUTHORITY OF COMPLAINANT.

3. Further complaining, your orator says that under and by virtue of the corporate authority vested in it by and under the laws of the State of New York your orator is fully authorized and empowered to sue and be sued and to prosecute and defend in any Court in the United States, and under and by virtue of its charter, is fully authorized to act as Trustee under any mortgage or bond issued by any individual, State, municipality, body politic or corporate. and to act as Trustee for deed, will, or other appointment, or as Trustee or Receiver under any order or judgment or decree of any Court and to give the necessary bonds or undertakings required by law; and to accept and execute all such trust duties and powers, not inconsistent with the laws of the State of New York, as may be conferred upon or confided to it, and to charge and receive payment for all the services herein enumerated.

CORPORATE LAWS OF FLORIDA.

4. And, further complaining, your orator says that the Florida East Coast Railway Company is a corporation organized, created and existing under the laws of the State of Florida; that, under and by virtue of said laws, the said Florida East Coast Railway Company is authorized and empowered among other things, as follows:

2241. CERTAIN POWERS ENUMERATED: Every railroad and canal company shall be empowered:

1. To cause such examinations and surveys for the proposed railroad or canal to be made as shall be necessary for the selection of the most advantageous route, and for such purposes,
by its officers. agents and servants to enter upon the
8 lands or water of any person for that purpose.

2. To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction maintenance and accommodation of its road or

canal, but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

3. To purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its road or canal and the stations and other accommodations necessary to accomplish the objects of its incorporation, and to sell, lease, or buy any lands or real estate not necessary for its use,

4. To lay out its road or canal, not exceeding two hundred eet in width and to construct the same, and for the purpose of cuttings and embankments and for obtaining gravel and other material, to take as much land as may be necessary for the proper construction, operation and security of the road or canal, or to cut down any trees that may be in danger of falling on the road or into the canal, making compensation therefor as provided for land taken for the use of the company.

5. To construct its road or canal across, along or upon or use any stream of water, water-course, street, highway or canal which the route of its road or canal shall interest or touch, and whenever the track of any railroad or canal shall touch or intersect or cross any road, highway or street, it may be carried over or under such railroad or canal, as may be found most expedient for the public good, and in case any embankment or cut in the construction of any railroad or canal shall make it necessary to change the course of any highway or street, the company may construct such road or canal so as to change the course or direction of any road, highway or street.

6. To cross, intersect or unite its railroad with any other railroad heretofore or hereafter to be constructed at any point in its route or upon the ground of any other railroad company with the necessary turnouts, sidings and switches and other conveniences in furtherance in the objects of its connections, and every company whose railroad is or shall be hereafter intersected by any new railroad can unite with the owners of such new railroads forming such intersections and connections and grant the facilities aforesaid, and if the two corporations can not agree upon the amount of compensation to be made therefor and all the points and matters of such crossing and connections, the same shall be ascertained according to the provisions for exercising the right of eminent domain, and no company which shall have obtained the right of way and constructed its road at the point of intersection before the beginning of proceedings for condemnation shall be required to alter the grade or change the location of its road.

7. To take and convey persons or property over their railroad or canal by the power or force of steam or animals or by any mechanical power, and to receive compensation therefor,

and to do all the business incident to railroads or canal business.

8. To erect and maintain all convenient buildings, wharves, docks, stations, fixtures and machinery for the accommodation and use of their passengers and freight business.

9. To regulate the time and manner in which passengers and property shall be transported.

10. To borrow such sums of money at such rates of interest and upon such terms as the company or its board of directors shall authorize or agree upon and may deem necessary or expedient, and to execute one or more trust deeds or mortgages, or both, as the occasion may require, of railroad or railroads, canal or canals constructed or in process of construction by said company, for the amount or amounts borrowed or owing by such company, as its board of directors shall deem expedient, and such company may make such provisions in such trust deed or mortgage for trasferring their railroad track or canal right of way, depots, grounds, rights, privileges, franchises, immunities, appendages and appurtenances used in connection with such railroad or railroads, canal or canals, in any manner whatsoever then belonging to the said company, or which shall thereafter belong to it, as security for any bonds, debts or sums of money as may be secured by such trust deed or mortgage, as they shall think proper, and in case of sale of any railroad or canal, or any part thereof, constructed or in course of construction by any railroad or canal company, by virtue of any trust deed or of any foreclosure of any mortgage thereon, the party or parties acquiring title under such, and their associates, successors or assigns shall have or acquire thereby, and shall exercise and enjoy thereafter the same rights, privileges, grants, franchises, immunities and advantages in or by said trust deed or mortgage enumerated and conveyed, which belonged to and were enjoyed by the company making such deed or mortgage or contracting such debt, so far as the same relate to or appertain to that portion of said road or canal, or the line thereof mentioned or described, and conveyed by said mortgage or trust deed and no further, as fully and absolutely in all respects as the corporators, office-holders share-holders and agents of such company might or could have done, had not such sale or purchase taken place, and such purchasers, their associates, successors or assigns may become incorporated as provided by law.

2242. Rolling Stock to be Fixtures. All rolling stock of any railroad company used or employed in connection with its railroad shall, and the same is hereby declared to be, fixtures, and all such property and additional right of way, depots,

grounds, and other real property acquired subsequently to any deed of trust or mortgage which may be described as provided for therein, shall be subject to the same lien as is created by such trust deed or mortgage upon the property therein created by such trust deed or mortgage upon the property therein described and to which the company had titles at the time of its execution.

2247. EXTENSION. Any railroad or canal company now existing or hereafter organized under the laws of this state may extend its railroad or canal from any point named in its charter, or may build branch railroads from any point or points in the line of road. Before making any such extension or building such branch road or canal, the company shall, by resolution of its board of directors to be entered in the records of its proceedings, designate the route of such proposed extension or branch in the manner prescribed in section 2246 and file a certificate as therein provided.

2248. CONSOLIDATION, LEASE, AND PURCHASE. Any railroad or canal company in this State shall have the power, and authority is hereby granted, to make and enter into contracts with any railroad or canal company, which has constructed or shall hereafter construct any railroad or canal within this State or in any other State, as will enable said companies to run their roads in connection with each other, and to merge their stock, or to consolidate with any company within or without this State, or to lease and purchase the stock and property of any other company, and hold, use and occupy the same in such manner as they shall deem most beneficial to their interests. It shall be lawful for such companies to build, construct and run as a part of their corporate property, such number of steamboats or vessels, as they may deem necessary to facilitate the business operation of such company or companies. Parallel or competing lines of railroad may not consolidate their several franchises, lines of railroad, or the management thereof, without special permission from the State Railroad Commission, and all such consolidations, or attempted consolidations, without permission as aforesaid shall be ultra vires.

And your orator says that said provisions of law of the State of Florida are contained and embraced in Sections 2241, 2242 2247, and 2248 of the Revised Statutes of the said State and the Acts amendatory thereof, and reference is hereby made thereto the same as though they were more fully and completely set forth.

CHARTERED RIGHTS OF FLORIDA EAST COAST RAILWAY COMPANY.

5. And, further complaining, your orator says that in the year 1892, pursuant to the Acts and under the authority of the Legislature of the State of Florida, a charter was granted to John Bushnell, George W. Colton, George Cheseboro, W. A. Harris and L. B. Dryer, who made and signed articles of association incorporating the Florida Coast and Gulf Railway Company to construct and operate a line of roads from a point at or near the City of Jacksonville, in Duval County, Florida, to a point on the waters of the Gulf of Mexico, at or near the City of Tampa, in Hillsboro County, Florida, and running through the Counties of Duval, St. Johns, Putnam, Volusia, Brevard, Orange, Osceola, Dade, Polk, and Hillsboro; the certificate of incorporation was issued on the 28th of May, 1892, and signed by the Governor and Secretary of State of Florida, under the great seal of the State, in accordance with the articles of association and the laws of the State of Florida. That in the month of October, 1892, at a meeting of the stockholders of the said Florida Coast and Gulf Railway Company, a resolution was adopted changing the name of said corporation from the Florida Coast and Gulf Railway Company to Jacksonville, St. Augustine and Indian River Railway Company, and a copy of said resolution, certified under the seal of said Com-
11 pany and filed in the office of the Secretary of State of the State of Florida, due notice and publication thereof having been made according to law. And thereupon the State of Florida, on the 31st day of October, 1892, by the Governor and Secretary of State, issued Letters Patent to the said Jacksonville, St. Augustine and Indian River Railway Company, granting unto it full authority to exercise all the powers and privileges of such corporation under and in accordance with its charter and resolution adopted as aforesaid.

And your orator says that on the 7th day of September, 1895, at a meeting of the stockholders of said Jacksonville, St. Augustine and Indian River Railway Company held, after being duly called as provided by law, a resolution was adopted changing the name of said Company from the Jacksonvile, St. Augustine and Indian River Railway Company to the Florida East Coast Railway Company, and a certified copy of said resolution filed, pursuant to law, in the office of the Secretary of State of the State of Florida, and on the 13th day of September, 1895, the Governor and Secretary of State of the State of Florida, under the great seal of said State, issued Letters Patent granting unto the said Florida East Coast Railway Com-

pany full corporate authority to exercise all the powers and privileges of such corporation under and in pursuance with its charter and the resolution adopted as aforesaid.

Copies of the various patents issued to the Florida Coast and Gulf Railway Company, to the Jacksonville, St. Augustine and Indian River Railway Company, and to the Florida East Coast Railway Company are hereto annexed, marked Exhibit "1," which your orator prays may be taken as part of this bill and referred to as often as may be deemed necessary..

12 ROADS MERGED IN AND CONSOLIDATED WITH.

And your orator further says, that afterwards all the chartered rights and title, interest and right of way of a certain railroad company duly chartered under the laws of the State of Florida, and known as the Jacksonville, St. Augustine and Halifax River Railway Company, was, on April 4th, 1896, transferred to the Florida East Coast Railway Company; and afterwards a certain railroad company from a junction with the St. Johns Railway, four miles from St. Augustine, to Palatka, including the right of way and equipment and including all interest in the St. Johns River, at Palatka, and any lands granted, or to be granted by the State, was transferred to the said Florida East Coast Railway Company; that on the 4th of April, 1896, a certain railroad, together with all its chartered rights, known as the St. Augustine and Palatka Railway Company, was by deed transferred and assigned to the St Augustine and Halifax Railway Company, and by the said St. Augustine and Halifax Railway Company transferred and assigned to the Florida East Coast Railway Company.

On the said April 4th, 1896, a certain Railway, together with all its chartered rights, right of way, equipment and lands granted or to be granted by the State on the St. Johns River to St. Augustine, was by the said St. Augustine Railway Company deeded to the Florida East Coast Railway Company. That on October 1st 1888, a certain railroad company known as the St. Johns and Halifax Railroad Company, together with its right of way and equipment and lands granted or to be granted by the State, was deeded to the St. Johns and Halifax River Railway Company; and on the 4th day of April, 1896, said Railway, with all its chartered rights and property of every description, was by the St. Johns and Halifax

13 River Railway Company transferred to the Florida East Coast Railway Company. That on the 4th of April, 1896, a certain railway, together with all its chartered rights, known as the St. Augustine and Palatka Railway Company, was by deed transferred and assigned to the St. Augustine and

Halifax River Railway Company and by the St. Augustine and Halifax River Railway Company transferred and assigned to the Florida East Coast Railway Company. On the said April 4th, 1896, a certain railway known as the St. Johns Railway Company, together with all its chartered rights, right of way, equipment and lands granted or to be granted by the State on the St. Johns River to St. Augustine was by the said St. Johns Railway Company deeded to the Florida East Coast Railway Company. That a certain railroad known as the St. Johns and Halifax Railroad Company, together with its chartered rights, right of way, equipment and lands granted or to be granted by the State, was on the first of October, 1888, deeded to the St. Johns and Halifax River Railway Company; and on the 4th of April, 1896, said railroad company, with all its chartered rights and property of every description was by the St. Johns and Halifax River Railway Company, transferred to the said Florida East Coast Railway Company, and on June 18th, 1901, in order to cure certain defects in the deed of April 4, 1906, the St. Johns and Halifax River Railway Company executed another deed to the Florida East Coast Railway Company for the same purpose, including all lands owned by it.

And your orator says that on the 25th of September, 1900, the Jacksonville and Atlantic Railway Company, a corporation owning a line of railroad from South Jacksonville to Pablo, by its deed of that date transferred to the Florida East Coast Railway Company said railroad, including its chartered rights, right of way, equipment and lands granted or to be granted by the State. That on the 5th of May, 1896, the Jackson-
14 ville Bridge Company, which owned a bridge over the St. Johns River at Jacksonville, deeded said bridge and all its property to the Florida East Coast Railway Company; that on the said 5th day of May, 1896, the Palatka Bridge Company, which owned a bridge and other property crossing the St. Johns River at Palatka, deeded its bridge and all its property to the Florida East Coast Railway Company; that on the 16th of February, 1898, the Ormond Bridge Company, which owned a bridge and trestle and railroad tracks and right of way over the Halifax River at Ormond to the beach on the Atlantic Coast, deeded said bridge, railroad tracks, and all its property to the Florida East Coast Railway Company. That in the year 1899, at public auction, Chas. S. Adams and Dennis Eagan, Masters appointed by the United States Circuit Court, sold at public outcry to T. Sanford Beatty the line of railroad running from Enterprise, in the County of Volusia, to Titusville, in the County of Brevard, said line of railroad being theretofore known as the Atlantic Coast, St. Johns and Indian River Railway Company; and on the 21st day of April, 1899, executed

a deed of said property to the said T. Sanford Beatty; that on April 22nd, 1899, the said T. Sanford Beatty deeded said property so purchased by him to A. V. S. Smith, and the said A. V. S. Smith, on the 1st of June, 1899, deeded said property to the Southeastern Railway Company, a corporation, and on the 18th of July, 1902, the said Southeastern Railway Company deeded said railroad property to the Florida East Coast Railway Company, whereby and by reason of said sale the merger and consolidation of the railroad property hereinbefore described became and formed what is now the property of the defendant, the Florida East Coast Railway Company.

15 THE COMPLETED LINE OF RAILWAY.

And your orator further says that under and by virtue of the charters and patents to the several lines of railroads hereinbefore described and set forth, the defendant, the Florida East Coast Railway Company, became possessed of the following lines of railroad already constructed and in operation, to-wit:

The line from Jacksonville to St. Augustine.....	36.4 miles;
The line from Palatka to St. Augustine.....	27.7 miles;
The line from East Palatka to Daytona.....	48.2 miles;
The line from New Smyrna to Orange City Junction	27.4 miles;
The line from Titusville to Enterprise Junction..	35.6 miles;
The line from a point on the St. Johns River, opposite Jacksonville, to Pablo Beach	17.8 miles;
Making a total of	193.1 miles.

And your orator says that of the different lines hereinbefore mentioned the line from Jacksonville to Daytona, a distance of 109.7 miles, now forms what is known as part of the main track of the Florida East Coast Railway and that the other roads hereinbefore set forth are branches thereof.

And, further complaining, your orator says that, under and by virtue of its articles of incorporation, the said Florida East Coast Railway Company was fully authorized and empowered to build, construct and operate a line of railroad from the City of Jacksonville, in the County of Duval, to a point on the Miami River and Biscayne Bay, at Miami, in Dade County, Florida; and that, after its said incorporation, the said Florida East Coast Railway Company proceeded to rebuild and to re-equip the lines of railroad from Jacksonville to St. Augustine, from Palatka to St. Augustine, from Palatka to

16 Daytona; and from Daytona south and proceeded to grade, tie, and otherwise construct and equip

a line of railroad from Daytona to the City of Miami, in the county of Dade, a total distance of 256.3 miles, which, added to the mileage of the three lines of road heretofore referred to, made an aggregate of 366 miles from the City of Jacksonville, in the County of Duval, to said City of Miami, in Dade County, together with branches, hereinbefore mentioned and described.

And your orator, further complaining, says that, under its charter as aforesaid, and under the laws of said State, the defendant, the Florida East Coast Railway Company, constructed, acquired, built and equipped and now owns, controls and operates the following lines of railroad in the State of Florida:

(a) A main line of railroad beginning at Jacksonville, Florida, at a point near the St. Johns River, in Duval County, and running to the City of Miami, on the Miami River and Biscayne Bay, in Dade County, and located and constructed through the Counties of Duval, St. Johns, Putnam, Volusia, Brevard and Dade, and having an aggregate mileage of 366 miles.

(b) A branch extending from East Palatka, on the south side of the St. Johns River, across said river to the City of Palatka, all in Putnam County, Florida, a distance of 2.67 miles.

(c) A branch extending from a point on said main line about 137-100 miles from East Palatka to the town of San Mateo, all in Putnam County, Florida, a distance of 2.70 miles.

(d) A branch extending from a point on said main line at or near the town of Ormond, across the Halifax River to the Atlantic Ocean, all in Volusia County, Florida, a distance of 140-100 miles.

(e) A branch extending from the town of New Smyrna to Orange City Junction, all in Volusia County, Florida, a distance of 27.40 miles.

17 (f) A branch extending from a point on the main line at or near Rockledge to the Indian River, all in Brevard County, Florida, a distance of 0.60 miles.

(g) A branch extending from a point on the main line at West Palm Beach to the Atlantic Ocean, at or near Palm Beach, all in Dade County, Florida, a distance of 1.50 miles.

(h) A branch extending from said main line from the town of Miami to Homestead, all in Dade County, Florida, a distance of 27.60 miles.

(j) A branch extending from Titusville on said main line, in Brevard County, on Indian River, to Enterprise Junction, in Volusia County, Florida, a distance of 35.26 miles.

(k) A branch extending from Jacksonville, in Duval County to Mayport, in Duval County, a distance of 24 miles.

And your orator says that the said Florida East Coast Railway Company also extended the line of road from Pablo Beach to Mayport, a distance of 6.20 miles, making a total of 124 miles of branches and spurs, or a total of 490 miles of railroad owned and operated by said Florida East Coast Railway Company; that, in addition, the said Florida East Coast Railway Company leases from the end of the Florida East Coast Railway track to Enterprise Junction, a distance of 4.04 miles, and operates its trains from Enterprise Junction to Sanford over the Atlantic Coast Line Railroad Company tracks, a further distance of 6.90 miles, making a grand total of 500.07 miles operated by the Florida East Coast Railway Company.

VESTED RIGHT TO CHARGE FIVE CENTS PER MILE FOR PASSENGER FARES.

And, further complaining, your orator says that on the 28th day of May, A. D. 1892, when the Patent was issued to
18 the Florida Coast and Gulf Railway Company under the laws of the State of Florida, the said Florida Coast and Gulf Railway Company was authorized to charge a rate for passengers not exceeding 5c per mile. And your orator avers and charges that the Florida East Coast Railway Company was and is vested with all the rights and powers conferred upon the Florida Coast and Gulf Railway Company; that the Act empowering said Railway Company to charge not exceeding 5c per mile for passenger rates was repealed by the Revised Statutes which went into effect in the State of Florida on the 13th day of June, 1892, but, by the Act of Legislature adopting and providing for the publication of the Revised Statutes, the 3rd Section of said Act is worded as follows: "The repeal of any statute by said revision shall not affect any right accruing before such repeal."

And your orator avers and charges that the right of the defendant, the Florida East Coast Railway Company, to charge a passenger rate of not exceeding 5c per mile was not affected by the Revised Statutes repealing said law.

RAILROAD COMMISSIONERS.

And, further complaining, your orator says that the defendants, Newton V. Blitch, Thomas L. Morgan and R. Hudson Burr, are Railroad Commissioners of the State of Florida, elected under an Act of the Legislature of the said State June, A. D. 1899; that your orator is informed and believes that the

said Newton Blitch has had no actual experience either in the construction or operation of railraods; that your orator is informed and believes that the defendant, Thomas L. Morgan, another Railroad Commissioner, has had a limited experience as a contractor for grading railroad tracks, furnishing and placing ties and laying rails thereon, but has had no other or further personal knowledge or experience in the con-
19 struction of railroads and has had no personal knowledge or experience whatever in the operation of railroads or the cost thereof; that the defendant, R. Hudson Burr, has had no personal experience or knowledge of the construction or operation of railroads. And your orator further avers and charges on information and belief that the wrongs and injuries hereinafter complained of were and are inflicted mainly by the actions of the defendants Morgan and Burr, constituting a majority of said Railroad Commissioners.

POWER OF RAILROAD COMMISSIONERS.

And, further complaining, your orator says that in the year 1897 the Legislature of the State of Florida enacted a law known as Chapter 4549 of the Laws of Florida, and approved May 8, 1897, providing for the appointment of three Commissioners, the title of said Act being,

> "An Act to Provide for the Regulation of Railroad Schedules, Freights, Express, Sleeping-Car and Passenger Tariffs, and Building of Freight and Passenger Depots in this State, to Prevent Unjust Discrimination in the Rates Charged for the Transportation of Passengers and Freight, and to Prohibit Railroad Companies, Corporations, Persons and all Common Carriers in this State from Charging Other than Just and Reasonable Rates, and to Enforce the Same, and to Prescribe a Mode of Procedure and Rules of Evidence in Relation Thereto; and to Provide for the Appointment and Election of Commissioners, and to Prescribe their Duties and Powers."

And in the year 1899 the Legislature of the State of Florida amended said law by the passage of an Act known as Chapter 4549 and the title of said Act being as follows:

> "An Act to Revise and Amend an Act Entitled, 'An Act to Provide for the Regulation of Railroad Schedules, Freight and Passenger Depots in this State; to Prevent Unjust Discrimination in the Rates charged for the Transportation of Passengers and Freight, and to Prohibit Railroad Companies, Corporations, Persons and all Common

Carriers in this State from Charging other than Just and Reasonable Rates, and to Enforce the Same, and to Prescribe a Mode of Procedure and Rules of Evidence in Regulation thereto; and to Provide for the Appointment and Election of Commissioners and to Prescribe their Duties and Powers, and to Authorize said Commissioners to Regulate, Supervise and Control the Use and the Charges for the Use of and Admission to Passenger Terminals
20 and Union Depots and to Vest said Commissioners with Judicial Powers; and Provide Remedies for the Enforcement of the Provisions of this Act.'"

And your orator says that under and by virtue of Section 6 of said Act it was and is required of said Commissioners that they shall make reasonable and just rates of passenger and freight transportation to be observed by all railroad companies and common carriers doing business in this State over their respective lines or connecting lines and to make reasonable and just regulations as to the charges at any and all points for the necessary handling and delivery of all kinds of freight and transportation of passengers. And your orator avers and charges that, under the provisions of said Act of 1899, it was and is the duty of said Commissioners in prescribing rates for freight and passengers to consider, not only the difference between the bare cost of operating trains of a railroad but also the value of the property and the capital invested therein and the fixed charges annually to be paid by said road on account of its indebtedness and that to enable said Commissioners to make reasonable and just rates it was and is the duty of said Railroad Commissioners to take into consideration:

1. The value of the Railroad property.
2. The bonded and other indebtedness bearing interest not exceeding the value of the property.
3. The cost of operating a railroad in a reasonably economical manner.
4. The resident population on the line of a railroad.
5. The aggregate number of passengers traveling on the road.
6. The character of the passenger traffic, whether temporary or permanent.
7. The character and class of passengers traveling on the road.
21 8. The character and class of equipment required to accommodate the class of passengers traveling on the road.
9. The annual expenditure necessary to maintain passenger traffic on the line of road.
10. The average cost per mile of transporting passengers.

11. The volume and character of freight carried.
12. The cost of carrying freight.
13. The reasonable profit which a railroad company is entitled to earn on its business.

PENALTIES AUTHORIZED.

And, further complaining, your orator says that Sections 12, 13, and 14 of said Act of 1899 are worded as follows:

"If any railroad, railroad company, or other common carrier doing business in this State, shall by any officer, agent or employee be guilty of a violation or disregard of any rate, schedule, rule or regulation, provided or prescribed by said Commission, or shall fail to make any report required to be made under the provisions of this Act, or shall otherwise violate any provision of this Act, such company or common carrier shall thereby incur a penalty for each such offense of not more than five thousand dollars, to be fixed and imposed by said Commissioners after not less than ten days' notice of the charge of such violation or disregard of rate, schedule, rule or regulation, or failure to make report or other violation of the provisions of this act, and upon which charge such company or common carrier shall have had an opportunity to be heard by said Commissioners, which fine or penalty, in the amount so fixed and imposed, if not promptly paid to the State Treasurer, shall be recovered, with interest hereon, by an action in any County in the State where such action or violation has occurred, or in any other County in the State through or in which such Company or common carrier runs or does business. The fact of the fixing and imposing of such fine by the Commissioners shall constitute prima facie evidence of everything necessary to create the liability or require the payment of the fine or penalty as fixed and imposed, and to authorize a recovery thereon in any action or proceeding brought by the Commissioners, and a copy of the entry in the minute book of the Commissioners of the order fixing and imposing such a fine or penalty, certified by the Chairman of the Board of Railroad Commissioners, shall constitute prima facie evidence of the fact that such fine or penalty was fixed and imposed by the Commission. The Commissioners shall institute such action through the Attorney General or State Attorney, who shall not require other fees than those they now receive by law, or by special counsel employed by the Commissioners, and Attorney General, as provided in Section

7 of this Act, the fees of which special counsel shall be fixed and allowed by the Commissioners and the Attorney General as may seem to them reasonable and just, and any and all expenses of litigation and proceedings under the provisions of this Act may be by the Commissioners allowed and paid, and in the event of recovery of any such fine or penalty, may be paid out of any moneys re-
22 covered under the provisions hereof, and the balance of any moneys so recovered shall be, by the State Treasurer, put to the credit of the Railroad Commission, to meet any of the expenses of said Commission and the cost of carrying out and enforcing the provisions of this Act. The Commissioners shall have the right to suspend, reduce or remit the same on such terms or conditions as may be fixed by them.

SEC. 13. If any railroad company, or other common carrier, doing business in this state, shall, in violation or disregard of any rule, rate or regulation, provided by the Commissioners aforesaid, inflict any wrong or injury on any person, it shall be the duty of the Railroad Commissioners, if requested by such injured person, to institute proceedings to compel restitution and to enforce the penalty incurred in any court having jurisdiction, and such action by the Railroad Commission shall preclude settlement by the party or parties injured without the consent of the Commission. And if any railroad company or common carrier shall discriminate, by way of rebate or otherwise, directly or indirectly, in favor of any consignor or consignee of freights within this State, or allowing him a reduction of the rate fixed by the Commissioners as reasonable and just, any other consignor or consignee of freights within this State shall have a right of action against the said railroad company or common carrier, and the amount of his damages shall be fixed by a jury, unless a jury shall be waived, and the measure of damages shall be such sum or sums of money as will fairly compensate the injury done to said last mentioned consignor or consignee. But in all such cases demand in writing on said railroad, railroad company or common carrier shall be made for the money damages sustained before suit is brought for recovery under this section, and all suits under this act shall be brought within twelve months after the commission of the alleged wrong or injury. Any person, firm or corporation from whom any moneys shall have been exacted by any such company or common carrier in excess of the amounts properly chargeable under the provision of this act, shall have the right, by written de-

mand, to require the Commissioners to enforce recovery of his damages, or may, upon failure of the Commissioners to institute suit therefor within ninety days after such written demand, institute suit in his own name against any such company or common carrier in any Court of competent jurisdiction in the County in which the cause of action arose, or in any County in the State through or in which such company or common carrier runs or does business; and any such person, firm or corporation, upon establishing his right of recovery, shall be entitled to recover the total amount of such overcharge or other pecuniary injury, with interest hereon, together with such additional amount as the jury may find necessary to reasonably compensate him for all expenses, including the value of his own time and services, and all reasonable cost and attorneys' fees incurred in the recovery of such damages, and such right of action shall exist in the legal represenatives or assignee of any such person, corporation or firm. In the event of an appeal after the judgment for such recovery, the Appellate Court shall, upon an affirmation of such judgment, allow and adjudge, or require to be allowed and adjudged, the payment of such additional amount as may be necessary to reasonably compensate the plaintiff for all such additional expenses as may be incident to the appeal and delay. And any such action or any other action instituted by the Railroad Commission shall be in the name, except as herein otherwise provided, of the "Railroad Commissioners of the State of Florida," without using their individual names, and the recovery had thereon shall be held by such Commissioners and applied to the use of the party or parties so injured; and such Commissioners may unite in one action the
23 claims of different persons by whom they may be requested to institute such suits where such claims are of the same character and against the same defendant.

SEC. 14. In all cases under the provisions of this act the rules of evidence shall be the same as in civil actions, except as hereinbefore otherwise provided. The remedies hereby given the injured person shall be regarded as cumulative to the remedies now given by law against railroads, railroad corporations and common carriers, and this act shall not be construed as repealing any statute giving such remedies; Provided, That making recompense to any person or corporation for wrongs or injuries done them by any railroad railroad company or other common carrier shall not prevent the Commissioners from enforcing penalties for any violations of rules, regulations or rates."

And your orator says that under the provisions of said Sections the mere fact of the fixing and imposing of the penalties therein provided is made to constitute prima facie evidence of "everything necessary to create liability or to require the payment of the fines and penalties as fixed and imposed by said Commissioners," and provision is made in said sections for instituting proceedings against any railroad company through the defendant, William H. Ellis, Attorney General of the State of Florida; the defendants, Augustus G. Hartridge, Augustus V. Long and John C. Jones, State Attorney of their respective Circuits, as hereinbefore set forth. And, under and by virtue of said Act, the railroad companies are deprived of the right of trial by jury, but are subjected to heavy penalties by the three Railroad Commissioners, as hereinbefore set forth.

MORTGAGES TO COMPLAINANT.

And, further complaining, your orator says that on the first day of September, 1897, the defendant, the Florida East Coast Railway Company, made and executed a mortgage to the complainant in trust for the holders and owners of its bonds aggregating $7,259,000, issued by said Company under and by authority of the Laws of the State of Florida on its railroad property therein described, from the City of Jacksonville to the City of Miami, Dade County, Florida; with branches
24 therein named, which said mortgage was duly executed by the said defendant, the Florida East Coast Railway Company, as will appear from a copy thereof hereto annexed, marked Exhibit "2," which your orator prays may be taken as part of this bill.

And your orator says that afterwards, to-wit: on the 1st day of October, A. D. 1902, the defendant, the Florida East Coast Railway Company, executed a second mortgage to the complainant to secure the payment of bonds aggregating not exceeding the sum of $8 741,000, such mortgage being executed to the complainant as trustee for the holders and owners of said bonds; said mortgage covering all the railroad and property of each corporation therein described from the City of Jacksonville to the town of Miami, in Dade County, with the branches therein described.

And your orator avers and charges on information and belief that of said bonds the sum of $6,000,000 thereof has been issued and is an outstanding obligation against said Company. Annexed hereto is a copy of said mortgage, marked Exhibit "3," which your orator prays may be taken as part of this bill and referred to as often as may be deemed necessary.

RIGHTS OF COMPLAINANT UNDER SAID MORTGAGES.

And your orator, further complaining, says that your orator accepted the trust contained in and created by said deeds of mortgage and, under and by virtue of said mortgages, it became and was and is necessary to be done and performed for the protection and safety of all persons, firms and corporations holding said bonds.

And your orator further says that, by reason of the wrongs and injuries hereinafter set forth, it has been requested by the owners and holders of a majority of said bonds to take such steps as may be necessary for the protection and safety of the trust reposed in it as hereinbefore set forth.

LIABILITIES OF THE FLORIDA EAST COAST RAILWAY COMPANY.

And, further complaining, your orator says that on the 30th of June, 1906, the Florida East Coast Railway Company's liabilities, including its capital stock, funded and unfunded debt, were as follows:

Capital stock (on which no dividends whatever are paid)	$1,000,000
Bonded indebtedness, first mortgage	7,259,000
Bonded indebtedness, second mortgage, $8,741,000, less $2,741,000, not issued	6,000,000
Unsecured indebtedness on line of road from Jacksonville to Miama	1,938,508
Total	$16,297,508

And your orator says that the interest on the bonded indebtedness was and is at the rate of 5 per cent per annum; that the annual interest on the outstanding bonds aggregates $662,950; that the interest on the unsecured indebtedness was and is at the rate of 5 per cent per annum, and that the annual interest thereon is $66,925.40, and that the aggregate interest on the bonded indebtedness and unsecured indebtedness is $729,875.40 annually.

PRESENT VALUE OF PROPERTY.

And, further complaining, your orator says that the liabilities of the said Florida East Coast Railway Company, as

hereinbefore set forth, including its indebtedness, are reasonable liabilities; that the road could not be constructed and its property replaced and its equipment supplied at this
26 time for $16,297,508; that a fair estimate of the present cost of replacing the property of said corporation is $..... And your orator says that the statement of the plant account of the said corporation shows a present valuation of $16,267,703.76 on the 30th day of June, A.D. 1906, without considering the enhancement in value of the property and the increased cost of construction at this time, as hereinbefore set forth. A statement of the number of bonds outstanding, floating indebtedness, and the plant account is hereto annexed, marked Exhibit "4," which your orator prays may be taken as part of this bill.

And your orator further avers and charges that the liabilities hereinbefore set forth of the Florida East Coast Railway Company are on the line of road from Jacksonville to Miami and the branches thereof, but do not include the expense of constructing the road from Miami to Homestead or any expenditure or indebtedness for the construction or maintenance of any part of the line of road from Miami to Homestead and from thence now being constructed to Key West; that the capitalization, funded indebtedness and unsecured indebtedness herein set forth are exclusively on the main line of road from Jacksonville to Miami and on the branches between these two points.

ASSESSMENT FOR TAXATION.

And, further complaining, your orator says on information and belief that the assessed valuation of the property of the Florida East Coast Railway Company for taxes is next to the Pensacola Division of the Louisville and Nashville Railroad Company, the highest assessed valuation of any railroad in the State of Florida, aggregating over $4,500,000 on the property of the Florida East Coast Railway Company, including its equipments and switch and side tracks. And your or-
27 ator avers on information and belief that said assessed valuation for taxes is equal to or higher than the average assessed valuation for taxes on real or personal property in the State of Florida; that the average rate of assessed valuation of real property in the State of Florida ranges from 25 per cent to 35 per cent of its actual cost or selling value, as will appear from the affidavits filed with this bill. That the assessment of the personal property of the defendant the Florida East Coast Railway Company, is largely in excess of the average assessment on personal property in the State of Flor-

ida. And your orator further says that the taxes paid by the Florida East Coast Railway Company were increased from $74,000, paid thereon for the year 1904, to $112,000 for the year 1905, and that the defendant, the Florida East Coast Railway Company, pays its full proportion of taxes in the State of Florida in accordance with the system and rate of valuation for taxes and that the defendants, the Florida Railroad Commissioners, have no reason or ground, by anything contained in the valuation of said railroad property for purposes of taxation, to claim that the said Florida East Coast Railway Company ought not to be permitted to earn a reasonable compensation on the actual cost and value of said property, or to earn enough to pay its fixed charges, to make necessary betterments, and to purchase necessary equipment.

28 A REASONABLE RATE OF INTEREST.

And your orator further avers and charges that the rate of interest on said bonds and on the floating indebtedness of the Florida East Coast Railway Company is reasonable and just; that the legal rate of interest on money in the State of Florida is 8 per cent per annum; that the ordinary rate of interest in the National and other Banks in the State of Florida varies from 8 per cent to 10 per cent, according to contract, and that the rate of interest on mortgages with good and adequate securityvaries from 7 per cent to 10 per cent, and that it is difficult, if not impossible, to borrow money on mortgages in the State of Florida at a less rate of interest.

RIGHT TO EARN REASONABLE PROFIT.

And, further complaining, your orator avers and charges that the defendant the Florida East Coast Railway Company, has a right to earn a reasonable profit thereon. And your orator further avers and charges that the defendant, the Florida East Coast Railway Company, if permitted so to do by the defendants Blitch Burr and Morgan, Railroad Commis-
29 sioners of Florida, could easily earn its fixed charges without injury to the people of Florida or to the public generally, and without preventing or retarding the development and prosperity of the State.

CAPITALIZATION AND DIVIDENDS.

And, further complaining, your orator avers and charges that the four principal lines of railroad in the State of Florida are capitalized as follows, to-wit:

	Per mile.
Atlantic Coast Line Railroad Company for line south of Savannah, including its Florida lines	$32,519.00
Louisville and Nashville Railroad Company, for its entire line, including Florida roads	49,902.00
Seaboard Air Line Railway	48,553.00
Florida East Coast Railway	29,403,00

The foregoing figures including stock and funded and unfunded indebtedness.

And your orator avers and charges that no dividends are declared on the outstanding stock of the Florida East Coast Railway and none on the stock of the Seaboard Air Line Railway, but that on the stock of the Atlantic Coast Line Railroad Company and on that of the Louisville and Nashville Railroad Company; has the smallest capitalization of any of the principal roads in the State of Florida and is entitled to earn a reasonable profit thereon.

NECESSITY FOR SURPLUS.

And your orator further avers and charges on information and belief that for the successful operation of a railroad in the State of Florida and to prevent excessive and unjust
30 capitalization and burdensome interest-bearing indebtedness it is reasonable and just that it should be permitted to earn a surplus over and above its actual operating expenses and fixed charges; that the accumulation of such surplus is a necessity for the following purposes:

1. To purchase rolling stock and equipments to replace those which are no longer fit for use; to purchase additional rolling stock and equipments and for the general improvement of the road.

2. To meet and defray extraordinary expenses such as the destruction of the track and buildings of the road from storms or other providential causes which cannot be guarded against.

3. As a sinking fund for the ultimate payment of the funded indebtedness of the Company.

And your orator further avers and charges that under the rates and regulation imposed by the defendants, Burr, Blitch and Morgan, comprising the Florida Railroad Commission, the Florida East Coast Railway Company is not permitted to earn any surplus whatever, either to replace the rolling stock worn out or destroyed, or to purchase additional necessary rolling stock and equipment, to meet unexpected contingencies or to establish a sinking fund for the payment and redemption of its interest-bearing indebtedness, and can only

meet such expenditures by an increase of capital and an addition to its funded debt and a steady increase of its fixed charges, thereby necessitating ultimately an over-capitalization and indebtedness of said Company and impairing the solvency of the Company and the value of its securities.

31 EXPENSES, EARNINGS, AND DEFICIT.

And, further complaining, your orator says that, with the exception of the year 1899, when there was a small balance in favor of the Company of $27,193.03, there has been in each and every one of these years, to-wit: for the fiscal years ending June 30, 1894, 1895, 1896, 1897, 1898, 1900, 1901, 1902, 1903, 1904 1905, and 1906, a deficit; the aggregate receipts and expenditures in these years being as follows:

Gross receipts from all sources	$18,762,108.96
Expenditures for bare operating expenses, taxes, interest, etc.	18,834,505.79
Deficit	$72,396.83
Additional expenditures on account of betterments and equipments	3,239,031.30
Aggregate deficit for 13 years	$3,311,428.13
Average yearly deficit	254,725.24

And, further complaining, your orator says that at the time of the charter of the several railroad corporations merging into and changing their names to that of the Florida East Coast Railway, said railway was authorized under and by virtue of the laws of the State of Florida to charge passenger rates not exceeding 5c per mile for every passenger traveling on its road, and that the said Florida East Coast Railway Company, under and by virtue of its chartered authority acquired a vested right to charge passenger rates not exceeding 5c per mile; that, after the establishment of the railroad commission of the State of Florida, the said Railroad Commissioners put in force a rate not exceeding 4c per mile; that the said Florida East Coast Railway Company and its managers, desiring to avoid any legal conflict with the said Railroad Commission or their predecessors in office, voluntarily consented to establish a rate of 4c per mile. And your orator says that under
32 said maximum rate so established at 4c per mile the average cost of transporting passengers on the line of

said road exceeded the average receipts; that in the month of March, 1902, for the purpose of endeavoring to develop the territory through which the lines of road of the Florida East Coast Railway ran, and in the further hope that, by a further reduction in the passenger rates, there would be such an increase of travel as would warrant the reduction, the Florida East Coast Railway Company determined as an experiment to make a still further reduction of passenger rates to a maximum of 3c per mile one way, and has since been charging a maximum of 3c per mile generally, except between Jacksonville and St. Augustine, where the rate was made $1.25 per capita, or 15c more than the 3c rate, and at other points as hereafter stated.

And your orator says that said rate was established because of the great expense of supporting and keeping up the bridge and trestle across the St. Johns River. And the defendant, the Florida East Coast Railway Company, added an arbitrary of 20c between Palatka and points south of Palatka for the purpose of protecting its through rates made on a 3c basis from Jacksonville to points on its road south of Palatka; that, without such arbitrary of 20c, it would have lost a large amount of passenger earnings from Jacksonville on its own line to points on its own line south of Palatka by reason of a competing line having a road between Jacksonville and Palatka ten miles shorter than that of the Florida East Coast Railway between the same points, whereby, unless such arbitrary was charged, passengers could travel from Jacksonville to Palatka and from thence south to points on the line of the Florida East Coast Railway at an aggregate of less than if traveling from Jacksonville to such points on the line
33 of the Florida East Coast Railway.

And your orator further says that the said Florida East Coast Railway Company also operates a branch of its road from West Palm Beach across Lake Worth to a point on the Atlantic Coast, a distance of 1.40 miles, incurring a large annual expense in maintaining a bridge and trestle across Lake Worth; that said bridge and trestle were built solely to accommodate and transport tourists from the West Palm Beach side of the lake to the winter hotels between Lake Worth and the Atlantic Ocean, and during the tourist season said road charges the sum of —— cents per capita for conveying passengers on said branch. For the further accommodation of tourists the Florida East Coast Railway Company constructed a spur or branch from its main line at Ormond to the hotels on the Halifax River, a distance of 1.40 miles, and made a special charge of —— cents per capita for transporting passengers to said hotels; that these spurs are operated only during the

months known as tourist months, to-wit: from December to May, inclusive.

And your orator says that for the twelve months ending April 30, 1906, the following were the earnings on said spurs in excess of 3c per month between Jacksonville and St. Augustine and from Palatka to points South:

Between Jacksonville and St. Augustine, 46,250 passengers, excess receipts over 3c per mile.....	$7,593.00
From and to Palatka, 7,954 passengers, excess receipts over 3c per mile	1,629.60
Over the Ormond spur, 1,971 passengers, excess receipts over 3c per mile	689.85
Oven the Palm Beach spur, 19,009 passengers. excess receipts over 3c per mile	4,752.25
Aggregate excess receipts over 3c per mile....	$14,664.70

34 And your orator says that the Florida East Coast Railway, when voluntarily making the general reduction of the passenger fare from a maximum of 4c per mile to 3c per mile, advised and informed the Florida Railroad Commission that said Company was making this reduction as an experiment; and your orator says that, as will be seen from the table of earnings made prior to said reduction, the passenger earnings and the number of passengers on the basis of 4c per mile had steadily increased, the percentage of increase in earnings under the 4c maximum rate being greater from 1900 to 1901 and from 1901 to 1902 and during previous years than after the reduction to 3c was made; that, owing to the large expenditures of the Florida East Coast Railway in advertising and of its owners in constructing tourist hotels at different points, there has been a continued increase in the number of passengers conveyed over said line of road and an increase in the aggregate sum received from passenger fares. but that notwithstanding your orator says that the extra expense incurred in securing and transporting said passengers, in the operation of increased numbers of trains daily and in the purchase of rolling stock and equipments of a class and character absolutely necessary. has been greater than the gain, and that the actual loss on the passenger service aggregates a larger sum at this time than it did when the maximum rate was 4c per mile.

Your orator says that for the fiscal year ending June 30, 1900, the earnings from passengers on said line of road aggregated $506,616.03

That for the fiscal year ending June 30, 1901, the earnings from passengers aggregated ..... 631,091.48, or an increase of about 19 2-3 per cent over the preceding year.

35 That the passenger earnings for the fiscal year ending June 30, 1902, aggregated.... 757,378.71 or nearly 17 per cent in excess of the preceding year;

That for the fiscal year ending June 30, 1903, the passenger earnings aggregated ..... 958,078.48 (the 3c rate being put in force in November of said year) or an increase of not quite 4 per cent over the preceding year;

That for the fiscal year ending June 30, 1904, the passenger earnings aggregated ..... 822,174.22 or an increase of about 4 per cent over the preceding year;

That for the fiscal year ending June 30, 1905, the passenger eaernings aggregated ..... 958.078.48 or an increase of about 14 per cent over the preceding year;

That for the fiscal year ending June 30, 1906, the passenger earnings aggregated ..... 991,189.13 or about 3 1-3 per cent in excess of the preceding year.

And your orator says on information and belief that, although the cost of transporting passengers on the maximum rate of 4c has decreased from .03.446 per passenger to .03.261, notwithstanding this fact, the aggregate loss to the road in transporting the greater number of passengers has in actual money increased over the loss sustained by the road on the 4c maximum rate.

And your orator avers and charges that it is not reasonable nor just to insist on a rate which inflicts upon said Company an annual and steadily increasing aggregate loss.

A detailed statement of the receipts and expenditures of the Florida East Coast Railway Company for thirteen years ending June 30, 1906, is hereto annexed, marked Exhibit "5," which your orator prays may be taken as part of this bill.

36 PRINCIPAL RAILROADS IN FLORIDA.

And, further complaining, your orator says that, regardless of the mileage, population, character of the road, cost thereof, and earnings the defendants, Burr, Blitch and Morgan, Rail-

road Commissioners, aforesaid, in making passenger rates, have, without regard to the conditions of the several roads, required each and every one of them to charge not exceeding 3c per mile for carrying passengers; and your orator says that there are four separate railroad corporations operating lines of railroads in the State of Florida, whose business and mileage constitute about 90 per cent of the entire railroad mileage and business in the State, as follows, to-wit:

1. The Atlantic Coast Line Railroad Company, operating approximatly 1,308 miles of railroad in the State, of which about 900 miles are known as main track, the remaining 408 miles consisting of short branches and spurs to phosphate mines and logging camps and saw mills, on the latter of which mixed trains run.

2. The Seaboard Air Line Railway, operating about 890 miles of railroad in the State, of which about 600 are main track and the balance consisting of spurs and branches to phosphate mines and logging camps and lumber mills, on which none but mixed trains are operated.

3. The Florida East Coast Railway Company, operating about 500 miles of railroad, of which 490 miles are main track, and on the entire line of the road passenger trains are run separate and distinct from freight trains, there being no mixed trains operated on said line of road, except on the Titusville branch, where one mixed train is run each day, and on the Orange City branch, where one mixed train is run each day.

4. The Louisville and Nashville Railroad, operating 230 miles of railroad, of which about 210 are main track, the balance being branches and spurs on which mixed trains are run.

37 And your orator further avers and charges that of the total gross earnings of $12,332,212.12 on railroads in the State of Florida, these four roads earned in the fiscal year ending June 30, 1905, $11,369 827.27, or a total of over 89 per cent of the entire railroad earnings of the State.

And your orator further avers and charges that of the above four railroads operating in the State of Florida the Florida East Coast Railway is the only one operating exclusively within the State of Florida and entirely dependent on its earnings within the State for its support and for a reasonable profit on the value of the property and the capital invested therein; that the other three lines of railroad belong to and form part of systems having many miles of railroads in other States and having a large through business into and from Florida from and into other States.

And your orator avers and charges that, by reason of the large excess of freight receipts over passenger receipts on the Atlantic Coast Line Railroad, Louisville and Nashville Rail-

road and Seaboard Air Line Railroad said roads were and are better able to carry passengers at a maximum rate of 3c per mile than the Florida East Coast Railway Company, whose earnings from its freights, as will hereafter be shown and for the reasons hereafter set forth, although your orator avers and charges on information and belief that the cost of
38 carrying passengers on all these roads exceeds three cents per mile.

PASSENGER AND FREIGHT EARNINGS.

And, further complaining, your orator says that in the fiscal year ending June 30, 1905, the principal lines of railroad hereinbefore set forth and doing an aggregate business of nearly 90 per cent of the entire railroad business of the State of Florida, earned as follows, to-wit:

	Total Passenger Earnings	Total Freight Earnings
Atlantic Coast Line Railroad	$15,565,231.57	$2,066,122.55
Florida East Coast Railway	1,225,934.30	1,102,929.37
Louisville & Nashville Railroad	379,187.76	819,808.71
Seaboard Air Line Railway	1,018,365.17	2,192 087.84

Under the head of passenger earnings are included receipts of all passenger trains, including mail and express revenue; and under the head of total freight earnings are included other earnings, such as rentals, received, etc. These other earnings under the head of freight earnings being for

Atlantic Coast Line Railroad	$120 322.00
Florida East Coast Railway	79,427.86
Louisville & Nashville Railroad	40,008.00
Seaboard Air Line Railway	80,416.00

And your orator avers and charges that on said prin-
39 cipal lines of road the percentage of freight earnings to passenger earnings, as hereinbefore set forth, was as follows, to-wit:

	Freight Earnings, per cent.	Passeger Earnings, per cent.
Atlantic Coast Line Railroad	66 1-5	33 4-5
Louisville & Nashville Railroad	69 1-8	30 7-8
Seaboard Air Line Railway	68 1-3	31 2-3
Florida East Coast Railway	47 1-3	52 2-3

And your orator avers and charges that the Florida East Coast Railway is the only railroad operating in the State of Florida whose gross earnings from its passenger traffic exceeds its gross earnings from freight. And your orator avers and charges that a much larger excess of freight earnings over passenger earnings is absolutely necessary to enable a railroad company in the State of Florida to carry passengers on the line of railroads at a maximum rate of 3c per mile fare.

A tabulated statement of the earnings of the principal railroads in the State of Florida for several years ending June 30, 1905, freight and passenger earnings, including freight tonnage, is hereto annexed, marked Exhibit "6," which your orator prays may be taken as part of this bill.

POPULATION TO MILE.

And, further complaining, your orator says that it is not reasonable and just to place the rate for carrying passengers the same on the Florida East Coast Railway as on the other principal lines of railroad in the State of Florida; that at the time of filing this bill the number of miles of railroad to the population in the territory traversed by the different
40 lines of railroad doing nearly 90 per cent of the entire railroad business of the State, is as follows, to-wit:

Florida East Coast Railway, exclusive of sidings, aggregates in round figures 500 miles, and on all of which are operated first-class trains, the passenger and freight trains being kept separate and distinct.

The Seaboard Air Line Railway aggregates about 800 miles, of which approximately 150 are operated by mixed trains, and consist principally of branches and spurs carrying lumber, naval stores and phosphate rock and return local freights.

The Atlantic Coast Line Railroad aggregates about 1,308 miles, of which about 400 miles are branch lines whose principal service is with mixed trains carrying cotton lumber, naval stores and phosphate rock.

And your orator says that these two lines, to-wit: the Seaboard Air Line Railway and the Atlantic Coast Line Railroad, compete with each other at different points in the same territory, making an aggregate of 2,147 miles.

The Louisville and Nashville Railroad aggregates about 210 miles, exclusive of sidings.

COMPARATIVE POPULATION.

And, further complaining, your orator says that on the Florida East Coast Railway, with an aggregate of 500 miles, there

was in 1905, according to the census of the State taken that year, and exclusive of Duval County, a resident population of about 36,000 souls; that the said Florida East Coast Railway Company, on the 30th of June, 1906, operates about 14½ miles of railroad to every thousand of the resident population on its line of road; that the Seaboard Air Line Railway and the Atlantic Coast Line Railroad Company operates an aggregate of about 2,147 miles of road in a territory containing a
41 local resident population of 382,000, exclusive of Duval County, common to the three roads, according to the census of 1905, or an average of about 5 2-3 miles of railroad to every thousand of the resident population; that the Louisville and Nashville Railroad Company operates an aggregate of 210 miles of railroad with a population tributary thereto, according to the census of 1905, of about 87,000, or an average of about 2½ miles of railroad to every thousand of the resident population.

Tabulated statements of the population and mileage of said railroads are hereto annexed, marked Exhibit "7," which your orator prays may be taken as part of this bill.

LAND GRANTS.

And, further complaining, your orator avers and charges that in the construction of its line of road said corporation has not received any aid from land grants made by the State, excepting as hereinafter stated.

The Jacksonville, St. Augustine and Halifax River Railway Company, now forming part of the Florida East Coast Railway Company's main line from Jacksonville to St. Augustine, received 56,782 acres of land from the State under an Act of the Legislature, approved Feb. 28, 1881; that the St. Johns and Halifax River Railway, now forming part of the Florida East Coast Railway Company's main line from Palatka to Daytona, received 110,398 acres of land from the State of Florida. The St. Augustine and Palatka Railway Company, now forming part of the Florida East Coast Railway Company's main line from St. Augustine to Palatka, received 41,510 acres of land from the State of Florida. The St. Johns Railway Company, now forming part of the Florida East Coast Railway Company, received 42,315 acres of land from the State of Florida.

Making an aggregate of about 250,000 acres of land deeded under the several Acts of the Legislature to those roads.
42 And your orator says on information and belief that before the Florida East Coast Railway Company acquired these roads a large part of the land deeded to them had already been conveyed; that from the land acquired by the

Florida East Coast Railway Company with these short roads, scarcely more than enough has been realized from the sale of them to defray the taxes and other expenses incurred on account of them.

The Florida East Coast Railway Company received no grants whatever with the branch from New Smyrna to Orange City Junction,and received no lands whatever with the branch from Titusville to Enterprise. And your orator says that, although under the Act of 1879 of the Laws of Florida the Florida East Coast Railway was entitled to alternate sections for six miles on each side of its road from Daytona, in Volusia County, to Miami, in Dade County, a distance of 256.3 miles, and from Miami to Homestead, a further distance of about 28 miles, making an aggregate of 284.3 miles; and, although the Florida East Coast Railway Company was granted seven thousand (7,000) acres to the mile, by special Act of the Legislature of Florida, in 1893, the said road has never received a single acre under either Act of the Legislature, but has itself constructed 294 miles of railroad without receiving any aid whatever from the State of Florida, and has purchased about 63 miles of road without any aid whatsoever from any land grant, making an aggregate of about 357 miles of road owned by the Florida East Coast Railway out of an aggregate of 490 miles, in the construction and operation of which the Florida East Coast Railway Company has not been aided by any land grant from the State, but has constructed and purchased said 357 miles of road with capital furnished by its owners or derived from the sale of the bonds of the company. And your orator says that the defendants, the Railroad Commissioners, the Attorney
43 General, and the State Attorneys, are not entitled to claim that, by reason of any land grants made by the State of Florida to said road there should be any deduction from the cost of construction.

PASSENGER EARNINGS.

And, further complaining, your orator says that there is comparatively little travel on the line of the Florida East Coast Railway on the part of the resident population; that for six months of each fiscal year, to-wit: from the first of December to the 31st of May following, is what is known as the "Tourist Season," and that during these six months over 80 per cent of the passenger business of said road comes from tourists from other States and countries, travelling in Florida for pleasure or for health; that these tourists are persons of large means, who demand and expect travelling accommodations of

the first class, and are willing to pay for the same; that, by reason of the occupations of the residents on said line of road, the resident travel throughout the year is quite small; that during what are called the six summer months the average monthly receipts are less than one-third of the receipts during these summer months, a large amount of the travel is not that of the resident population and that a considerable portion of the passenger eaernings during the months of June, July, August, September, and October is derived from what is known as the Mayport branch, on which the average rate of passenger fare per mile is less than 1½ per cent, for reasons hereinafter set forth.

And your orator hereto annexes a comparative statement of the passenger earnings of the Florida East Coast Railway for five years beginning July 1, 1901, and ending June 30, 1906, showing the difference between the passenger receipts during what are called the tourist months and what are called the summer months, said statement being marked Exhibit "8," which your orator prays may be taken as part of this bill.

44 Your orator further annexes hereto a tabulated statement of the passenger earnings by month during these respective years, marked Exhibit "9,' which your orator prays may be taken as part of this bill.

And your orator further avers and charges on information and belief that for the fiscal years ending June 30, 1905, and June 30, 1906, the passenger earnings on the main line of the Florida East Coast Railway were largely augmented and increased by reason of the construction of the extension of said railroad from Miami to Key West, large numbers of laborers traveling to and from Miami on said road and paying their own fare in each fiscal year; that many of these laborers work for a while on said extension, then leave and return again. And your orator states on information and belief that this temporary source of business increased the business on said road for the fiscal year ending June 30, 1906, $60,000 to $65,000, and that this source of income will terminate with the construction of the extension to Key West.

Your orator further avers and charges on information and belief that the increase of passenger traffic on the line of the Florida East Coast Railway was also sargely due to the increase on the Mayport branch during the summer months, and but for these increases the passenger traffic on the Florida East Coast Railway for the fiscal years ending June 30, 1906, would have been smaller than it had been during the preceding year.

Your orator annexes hereto a statement of the passenger earnings of the Florida East Coast Railway for the years be-

ginning July 1, 1901, and ending June 30, 1906, inclusive, showing passenger earnings month by month during said years, as follows:

1. From points in Florida to points in other States.
2. From other States to points in Florida.
45 3. From other States through Florida to other States and countries.
4. From points in Florida to points in Florida.

Said table is divided between the tourist and summer months, marked Exhibit "10," which your orator prays may be taken as part of this bill.

MAYPORT BRANCH.

And, further complaining, your orator says that of an aggregate of $991,189.3 received from passengers on the entire line of the Florida East Coast Railway during the year ending June 30, 1906, the passenger earnings on the Mayport branch were $40,756.04; that this branch of the road runs from Jacksonville to the Atlantic Coast, to Pablo and Atlantic Beach, and thence to Mayport on the St. Johns River, covering a distance of about twenty-four miles; that it is practically a passenger line; that the resident population is very small and that there is but a very limited traffic in freight; that of a total of $61,596.07 only $20,700.03 was derived from freight, of which a considerable part consisted of supplies carried to the hotels and boarding-houses on the coast; that the main business of said road consists of carrying passengers to the seashore, especially during the summer months, which begin in Florida about the first of April and end about the first of September; that the great bulk of passengers come from Jacksonville; that between Jacksonville and the sea coast, a distance of about 20 miles, the local passenger traffic is so small as not to exceed 1 per cent of the entire passenger earnings; that almost the entire passenger traffic originates in Jacksonville, and the great majority of the passengers consist of persons of
46 very small means, who, with their families, go on excursions to the seashore for the purpose of pleasure or health; that to attract and encourage this travel it was and is absolutely necessary to put the passenger rates very low, and the average rate per passenger per mile on this division, including parlor-car earnings, will not exceed 1½c per mile; that to charge more would be to lose four-fifths of its present earnings; that for six months during the fiscal year ending June 30, 1906, the entire passenger receipts for the seven months beginning the first of September, 1905, and ending on the 31st day of March, 1906, were $8,668.83, an average of about $1.239

per month; that for the five months of July and August, 1905, and April, May and June, 1906, the receipts for passenger traffic on this branch were $32,087.16, an average of about $6,417.50 per month; that during the months of October, November, December, January and February, the passenger receipts on this branch did not reach $1,000 per month; that nearly all of the passengers on this road purchase round-trip tickets.

And your orator further avers and charges that to attract and encourage passenger traffic on this branch the owners of the Florida East Coast Railway have constructed a large hotel at Atlantic Beach on the seashore, which is open and run for several months during the summer season at an annual loss and that, notwithstanding the low rate of passage, the defendant, the Florida East Coast Railway Company, has not been able to do a business on said branch of road sufficient to pay its operating expenses and the betterments on said branch and its proportional share of equipments and general expenses up to the present time.

Annexed hereto is a statement of the passenger earnings for said Mayport branch for the years 1905 and 1906, marked Exhibit "11," and a statement of the average receipts per passenger mile on said branch for the same years, which your orator prays may be taken as part of this bill and referred to as frequently as may be necessary.

47 RECEIPTS AND AVERAGE COST FOR CARRYING PASSENGERS PER MILE.

Your orator further charges on information and belief that prior to the maximum rate for carrying passengers being reduced from four cents to three cents per mile, the average receipts from passengers per mile and the cost of carrying them for the several years hereinafter stated each fiscal year ending on the 30th of June were as follows:

For the fiscal year ending June 30, 1900, the cost of passengers per mile was	.03.446
Average receipts per passenger per mile	.03.221
Loss per passenger	00.225
For the fiscal year ending June 30, 1901, average cost per passenger per mile	.03.984
Average receipts per passenger per mile	.03.242
Average loss	.00.741

And your orator says that the large increase of passengers during the fiscal year ending June 30, 1902, enabled the said

Railroad Company for the first time to earn a profit on its passenger traffic; the earnings and cost for that fiscal year being as follows:

Average cost per passenger per mile	.03.314
Average cost per passenger per mile	.03.287
Profit	.00.027

And your orator says that in the month of November, 1902, the maximum rate was, as an experiment, reduced to three cents per mile, and that each and every year thereafter it has cost more to carry each passenger per mile than the average rate paid by passengers, as will be seen by the following summary:

48 Average cost per passenger per mile for the fiscal year ending June 30, 1903	.03.528
Average rate per passenger per mile	.03.040
Average loss per passenger per mile	00.488
For the fiscal year ending June 30, 1904, average cost per passenger per mile	.03.369
Average rate per passenger mile	.02.950
Average loss per passenger per mile	00.719
For the fiscal year ending June 30, 1905, average cost per passenger per mile	.03.115
Average rate per passenger per mile	.02.969
Average loss per passenger per mile	.00.146
For the fiscal year ending June 30, 1906, average cost per passenger per mile	.03.261
Average rate per passenger per mile	.03.025
Average loss per passenger per mile	.00.236

And your orator says that notwithstanding the economy practiced on said road and the steady reduction in the cost of passenger service per passenger mile, the said Florida East Coast Railway Company has never, since the fiscal year ending June 30, 1902, been able to pay the expense of carrying its passengers at a maximum rate of 3c per mile, and that, owing to the increased number of passengers traveling, the loss incurred is steadily increasing until for the fiscal year ending June 30,

1906, it aggregated the sum of $75,776.33. And your orator says that, if the receipts for carrying mail and express matter (which your orator avers should properly be regarded as freight) were deducted the said Florida East Coast Railway Company would not have been able to have earned the expenses of operating its passenger trains during any year except the fiscal year ending June 30, 1902.

49 And your orator further avers and charges that, owing to the expensive system of advertisement by the Florida East Coast Railway Company and by the tourist hotels constructed on the line of said road by the owners thereof, there would have been the same increase of travel and a greater increase of passenger earnings with the maximum rate at 4c per mile than there was under the maximum rate of 3c per mile; that the increase came almost exclusively from tourists and persons of large means; that the increase from travel by local residents was small, as the tabulated statement hereto annexed shows.

And your orator further avers and charges that the experiment of reducing the maximum rate, with the exception herein set forth, on the main line of the road was a failure, and that the increase in receipts from passenger traffic under the reduced rate has not enabled the defendant, the Florida East Coast Railway Company, by reason of such increase to pay the expense of transporting passengers.

And your orator avers and charges on information and belief that the maximum rate of 4c per mile could and can be continued without injury to the road and without in the slightest degree affecting the prosperity or development of the State of Florida.

50 And your orator further avers and charges that the above receipts from passengers include the sums received from parlor and sleeping cars; that the actual receipts per mile per passenger are much less; all of which will more fully appear from a tabulated statement of the average receipts and costs hereto annexed marked Exhibit "12," which your orator prays may be taken as part of this bill.

AVERAGE RECEIPTS ON MAYPORT BRANCH

And, further complaining, your orator says that the average receipts per passenger per mile on the Mayport branch during the fiscal years beginning July 1, 1904, and ending June 30, 1096, including parlor-car earnings, were as follows, to-wit:

Average fare per passenger per mile for year ending June 30, 1905 ..... 1.549c;

Average fare per passenger per mile for the fiscal year ending June 30, 1906 ..... 1.574c; that, without counting parlor-car earnings, the average rate received on this branch per passenger per mile is about 1.438c, or less than 1½c per mile.

A tabulated statement of the average receipts per passenger per mile on the Mayport branch is hereto annexed, marked Exhibit "13," which your orator prays may be taken as part of this bill.

Annexed also is a statement of the passenger and freight gross earnings of this branch for the fiscal years ending June 30, 1905, and June 30, 1906, marked Exhibit "14," which your orator prays may be taken as part of this bill.

51 ACTUAL LOSS CARRYING PASSENGERS.

And, further complaining, your orator says that for the fiscal year ending June 30, 1904, the cost and expense of operating passenger trains on the Florida East Coast Railway was	$1,022 745.04
that the receipts from passengers, including parlor and sleeping car fares were	822,174.22
Showing a loss of	$200,570.82
That for the fiscal year ending June 30, 1905, the cost and expense of operating passenger trains was	$1,005,487.48
The receipts from passengers, including parlor and sleeping car fares were	958 078.48
Showing a loss of	$47,408.89
That for the fiscal year ending June 30, 1906, the cost and expense of operating passenger trains was	$
The receipts from passengers, including parlor and sleeping-car fares were	958,078.48
Showing a loss of	$

And your orator further avers and charges that but for the revenue derived from express and mail, which should properly be credited to freight receipts, the passenger trains on the Florida East Coast Railway would have been operated at a

heavy loss during each and every year of its operation, with the single exception of the fiscal year ending June 30, 1902.

52 FREIGHT TONNAGE ON DIFFERENT ROADS.

And, further complaining, your orator says that the tonnage of freight carried by the Florida East Coast Railway Company for the fiscal year ending June 30, 1904, was as follows:

	Tons.
From high-class freight, including fruit, vegetables, pineapples and melons	47,052
All other freight	436,313
Total tonnage	483,366

For the year ending June 30, 1905, the tonnage was as follows:

High-class freight, including fruit, vegetables, pineapples, and melons	42,376
Other freight	340,256
Total tonnage	382,632

During the fiscal year ending June 30, 1904, the Seaboard Air Line Railway carried tonnage of freight as follows:

	Tons.
Fruits and vegetables, including melons	83,331
Other freight	1,281,290
Total tonnage	1,364,621

During the fiscal year ending June 30, 1905, the Seaboard Air Line Railway carried the following tonnage of freight:

Fruits and vegetables, including melons	97,584
Other freight	1,286,067
Total tonnage	1,383,651

During the fiscal year ending June 30, 1904 the Atlantic Coast Line Railroad carried the following tonnage of freight:

Fruits and vegetables	124,350
Other freight	1,450,432
Total tonnage	1,574,782

53 During the fiscal year ending June 30, 1905, the Atlantic Coast Line Railroad carried the following tonnage of freight:

Fruits and vegetables, including melons	144,027
Other freight	1,632,686
Total tonnage	1,776,713

A tabulated statement of the tonnage of freight carried by the above-mentioned railroads is hereto annexed, marked Exhibit "15," which your orator praps may be taken as part of this bill.

INCREASE IN FREIGHT RATES IMPRACTICABLE

And, further complaining, your orator says on information and belief that while some of the schedules of freight rates on the line of said defendant, the Florida East Coast Railway Company's road, are unreasonably and unjustly low, that nevertheless, your orator is informed it would be inadvisable to require or demand a general increase of freight rates, as this might be calculated to check increase of production and development of the territory through which the road operates; that since the establishment of the Railroad Commission there has been a steady reduction in freight rates and an increase in the tonnage in carload lots, said reduction of rates ranging from 6 per cent to 60 per cent; that an increase of earnings from freight can only be obtained by an increase of the resident population on the line of the road and an increase in the production of fruit and vegetables which constitute the majority of outward-bound freights transported by the defendant, the Florida East Coast Railway Company. And your orator avers and charges that these outward freights consist mostly of pineapples, oranges and other vegetables, and are in the nature of luxuries, and that their increased production depends upon the increase of population of the United States and upon the con-

diton of the seasons; that the market for vegetables is
54 confined to those months only when these products cannot be obtained from the States north of Florida, and especially during the winter and early spring months and that the market for these products being confined to a limited number of the population of the country, and the competition from Cuba, Jamaica, Porto Rico and the Bahamas, where the cost of labor is materially less than it is in Florida, renders any great or rapid increase of production along the line of defendant's road unlkely; that any rapid increase would glut the

market and render the product unprofitable alike to the producer and to the railroad company, as, in cases where the markets have been glutted and the shipments are refused by consignees, or where the fruit and vegetables rot in shipment, the defendant, the Florida East Coast Railway Company, cannot collect the freight due thereon and such shipment of freight becomes a total loss; and, in consequence of these facts, but a moderate increase of outward freights can be expected; that, of an aggregate of 382,632 tons of freight hauled by the defendant, the Florida East Coast Railway Company, during the fiscal year ending June 30, 1905, only 42,376 tons consisted of oranges, pineapples and other fruits and vegetables, and of the remaining 340,256 tons only 16,224 tons consisted of turpentine and rosin were outward bound, while the remaining tonnage of outward freight was very small. And your orator says that, by reason of the facts herein stated, there cannot be for many years to came such an increase of freight on the line of the Florida East Coast Railway as will warrant its continuing to transport passengers at a loss.

55 COMPARATIVE TONNAGE OF DIFFERENT ROADS.

And, further complaining, your orator says that of the three principal lines of road in the State of Florida the following tonnage of freight carried by them during the fiscal year ending June 30, 1905:

	Tons.
Florida East Coast Railway	382,632
Seaboard Air Line Railway	1,383,653
Atlantic Coast Line Railroad	1,776,713

That during this fiscal year the Seaboard Air Line Railway Company transported over 1,840 tons of freight to each mile of road operated by it; the Atlantic Coast Line Railroad Company transported 1,350 tons of freight to every mile of road operated by it, while the Florida East Coast Railway Company carried less than 781 tons of freight to each mile of road operated by it.

LIMITATIONS ON FREIGHT.

And, further complaining, your orator says that on the lines of the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railway Company there is a large and steadily increasing freightage in kaolin, phosphate and cotton, lumber, naval stores and logs, which traffic is but little, if any, affected

by the seasons; that said lines of road also carry large quantities of fruit and vegetables, exceeding greatly in the aggregate volume tonnage of fruit and vegetables carried by the Florida East Coast Railway Company, as heretofore set forth; that the Florida East Coast Railway Company carries no phosphate, kaolin, or cotton, there being none of these products on its line of road. That, except for a limted number of miles on the northern end of its road, there is no timber adapted to
56 the manufacture of naval stores or lumber; that its freight traffic of lumber is very small; that for the year ending June 30, 1905, it transported only 16,124 tons of turpentine and rosin, as against 190,524 tons of turpentine and rosin transported by the Seaboard Air Line Railway Company, and 150,314 tons of rosin and turpentine carried by the Atlantic Coast Line Railroad Company during that fiscal year ending June 30, 1901 (your orator being unable to obtain the tonnage for the succeeding years, but which your orator is informed has largely increased), and your orator further avers and charges that the production of pineapples, oranges, tomatoes and other fruit and vegetables on the defendant, the Florida East Coast Railway Company's road, depends largely upon the weather; that in seasons of unusual cold weather the pineapples and vegetables are almost entirely destroyed, thereby depriving the Florida East Coast Railway Company of much freight from this source, and by reason thereof greatly reducing its inward freight. And your orator further says that the only means of increasing the revenues of said road without inflicting hardships and checking the development of the territory in which the road operates is by permitting the said Florida East Coast Railway Company to fix such maximum rate per mile for carrying passengers as will enable it to earn its operating expenses and fixed charges.

ROAD ECONOMICALLY CONDUCTED.

And, further complaining, your orator avers and charges on information and belief that the management of the Florida East Coast Railway Company is economically conducted; that
57 all of its purchases are made at the lowest prices obtainable in the market for the grade and quality purchased; that its salary list is as low as is consistent with efficient and successful service, and for ordinary labor it pays as small wages as it can obtain efficient and competent men to work for. That outside of its general officers the average price paid by said road for labor during the fiscal year ending June 3, 1906, was $1.57 per day.

Your orator further avers and charges on information and

belief, that all of the defendant, the Florida East Coast Railway Company's cars, locomotives and equipment are purchased at as low a figure as they can be obtained for the great class and character of the same; that its salaries for general officers are as low as officers of the required skill and capacity can be obtained for, and that the entire management of the road has been characterized by all the economy possible consistent with the proper, successful and efficient operation of the road and the transaction of its business.

58 AGENCIES.

And, further complaining, your orator says that on the line of the Florida East Coast Railway Company's road and branches there are two hundred and fifty-nine stations or an average of more than one to every two miles, at which freight or passengers, or both, are received and delivered. That, of this aggregate, forty-two are known as regular stations, at each of which there is a resident agent and the necessary employees to transact business. The average cost of the station buildings is about Three Thousand Dollars ($3,000) each; that, in addition the Company has to construct a cottage or place of residence for the agent at a cost of about Seventeen Hundred Dollars ($1,700). That the lowest price a resident agent can be obtained at any station is not far from $1,200.00 per annum, and that the average expense is much higher. And your orator says that at points where there is no connection with some other road or branch, involving transfers of passengers and freight, it does not and cannot employ an agent at any station whose expense exceeds 10 per cent of the gross earnings of said station; that there are over forty non-agency stations on the line of the road whose gross earnings exceed $2,500 per annum, and there are seventy-two non-agency stations on the line of road whose gross earnings are from $500 to $2,500 per annum, and one hundred and forty-five averaging less than $500 per annum. And your orator says that these agencies were established for the purpose of accommodating the people in the receipt and shipment of their freight; that all of these non-agency stations were established to save the people from hauling their fruit and vegetables to regular stations; that side-tracks were run to
59 their packing houses at the expense of the defendant, the Florida East Coast Railway Company, solely for the accommodation of the shippers, and with no purpose or intention of establishing resident agents at any one of them until the expenses at any one point were not above 10 per cent of the gross earings. That at all of these agencies the great

mass of the business is done during three or four months of each year, and during the remaining months of the year there is not business enough at any one of these stations to pay their current expenses.

Annexed hereto is a statement of all the agencies and non-agencies on the line of the Florida East Coast Railway, marked Exhibit " 15," which your orator prays may be taken as part of this bill. And your orator says that during the months in which the mass of the business is transacted at these stations the Florida East Coast Railway Company provides the amplest and most complete facilities for receiving freight and delivering the same; that the great bulk of the business at such stations consists of the shipping of fruit and vegetables; that the passenger traffic at such stations is very small, aggregating less on the average than fifteen per cent of the entire business transacted thereat, and that after the fruit and vegetables are shipped the business at these stations is so small that an agent would have practically nothing to do for more than nine months each year. And your orator says that, if the Florida East Coast Railway Company is required to establish a resident agent at each of these non-agency stations doing a gross business of $2,000 per annum, it will involve an annual additional expenditure of over $100,000 per annum; and also involve an additional immediate expense of over $100,000 to construct station buildings and agents' cottages thereat.

And your orator further says that the cost of maintaining an agent at such stations would aggregate more than 40 per cent of the gross earnings of said station, and would greatly increase the deficit already existing in the business of the defendant, the Florida East Coast Railway Company.

ORDERING AGENCIES ESTABLISHED.

And, further complaining, your orator avers and charges on information and belief that from nearly all of the non-agency stations applications have been made at various times to have resident agents established thereat, but that, in view of the large cost in proportion to their gross earnings, the company has not been financially able to establish such agents; and your orator says that because of the failure of said road to establish agents as requested, application has been made to the defendants, the Railroad Commissioners, to compel the said Railroad Company, to establish such agents. And your orator further says that, under Section 6 of the Act of 1899 of the Legislature of Florida, the said Railroad Commissioners were authorized to "Require the establishment of such freight and

passenger depots as the conditions of the road, safety and convenience of the passengers and prompt delivery of freight may justify." And your orator says that before requiring the establishment of a resident agent at any station it was and is the duty of the defendants, the Railroad Commissioners, to
61 ascertain the condition of the road; and your orator avers and charges that it was and is unreasonable and unjust to impose upon the said Florida East Coast Railway Company the expense of maintaining a resident agent at any point where the costs of such agency would amount to nearly one-half of the gross receipts of such agency.

The complainant annexes hereto a tabulated statement of the gross earnings of all the stations on the line of the Florida East Coast Railway for the year ending June 30, 1906, the figures of each station representing freight and passengers forwarded as well as received, marked Exhibit "16," which your orator prays may be taken as part of this bill.

AN UNREASONABLE AND UNJUST ORDER.

And your orator further sets forth that there is a place known as Cocoanut Grove on the line of the defendant's railroad, from four to six miles southwest from Miami; that on the road extending from Miami to Homestead a non-agency station has been established at Cocoanut Grove; that the gross earnings of the road at said station from March, 1904, to November, 1905, were only $4,935, of which $681.57 was for freight prepaid on the railroad company's material and $318.54 a temporary shipment of building material, making an aggregate of $1,000 not representing any regular business of the road, leaving only about $3,900 gross receipts, or an average of about $190 per month. That, in view of the small earnings at said station, the railroad company could not afford to establish a resident agent there; that in the month of April, 1906, twenty-five persons signed a petition addressed to the defendants, the Railroad Commissioners of Florida, requesting them to order the Florida East Coast Railway Company to appoint and maintain an agent at said Cocoanut Grove; and your
62 orator says that the defendant, the Florida East Coast Railway Company, by its proper officers and representatives, appeared before the Railroad Commissioners and presented to said Railroad Commissioners the facts herein set forth, and also advised and informed said Railroad Commissioners that the earnings of said road would not warrant any additional expenditures, and also advised and informed said Railroad Commissioners of the large floating indebtedness of the Florida East Coast Railway Company, and also advised and

informed the defendant Railroad Commissioners that of the twenty-five signers to the petition only seven shipped or received freight over said road, and that these seven only aggregated during the year ending June 30, 1905, a total of $183.67. And your orator further sets forth on information and belief that the defendants, the Florida East Coast Railway Company, also exhibited to the defendants, the Railroad Commissioners, a statement showing that the entire amount of freight received or shipped by all the petitioners to and from Miami by the signers of said petition for the same fiscal year aggregated only $726.38, and that the cost of establishing an agency would be not less than $1,200 per annum, or about 40 per cent of the gross earnings of said station; and your orator further says that, notwithstanding that the Florida East Coast Railway Company advised and informed the defendants, the Florida Railroad Commissioners, of its large unsecured indebtedness, and, further, that it had no surplus whatever with which to pay for the establishing of a resident agent at Cocoanut Grove, and that to establish one there would be to increase the expenditures and deficit of said Company by the expense and cost of maintaining such agent there; and your orator further says that, notwithstanding the condition of

63 the railroad company so presented to said Railroad Commissioners, and, notwithstanding the Railroad Commissioners were advised that the expense of maintaining a resident agent at Cocoanut Grove would exceed forty per cent (40%) of the gross earnings of said station, on the 30th day of April, 1906, the said defendants, the said Railroad Commissioners, ordered the defendant, the Florida East Coast Railway Company to establish an agent at Cocoanut Grove, Florida, and gave the said Railroad Company thirty days from April 30th in which to establish said agent.

A copy of the petition and the exhibits and order of the Railroad Commissioners are hereto annexed, marked Exhibit "17," which your orator prays may be taken as part of this bill.

And, further complaining, your orator says that it was not reasonable and just for the Railroad Commissioners of Florida to require the said Florida East Coast Railway to establish a resident agent at Cocoanut Grove, and that the effect of the order of said Commissioners has been and is to increase the deficit existing in the finances of said railroad to the extent of the cost and expenses of said agent.

BUSINESS AT COCOANUT GROVE.

And, further complaining, your orator says that during the fiscal year ending June 30, 1906, the entire receipts from pas-

sengers forwarded from Cocoanut Grove were $258.85, and the entire freight received at Coaconut Grove and forwarded therefrom amounted to $1,360.10, or an aggregate of $1,618.95; that the entire sum for passengers going to Cocoanut Grove received by the Florida East Coast Railway Company was $400; and the entire freight received for Cocoanut Grove
64 $2,526.57, making an aggregate of $4,345.52; that, of this amount $1,000 represented freight paid by the defendant company itself and a temporary shipment, leaving the gross earnings for the twelve months ending June 30, 1906, $3,345.52, and imposing upon the defendant company an aggregate expense of about 40 per cent of said gross earnings. And your orator further says that the defendants, the Florida Railroad Commissioners, were without authority of law to require said Company to establish a resident agent at Cocoanut Grove or at any other point along the line of said road; and that there has been no due process of law in requiring such resident agent to be established at Cocoanut Grove, and that the effect of requiring such resident agent to be there established is to take the property of the defendant company without just compensation, to deprive the defendant company of the management and control of its own property, to increase the existing deficit, to impair the solvency of the defendant company, and to destroy the value of the bonds for whose holders and owners your orator is the trustee.

REDUCTION ON LUMBER RATES.

And your orator further avers and charges that in the month of May, 1905, the defendants, the Railroad Commissioners, ordered a reduction in the freight on lumber, involving a loss to the Florida East Coast Railway Company of about $30,000 per annum; that said defendant Railroad Commissioners were enjoined from enforcing said order by other railroads, which suits are still pending; that thereupon the said Railroad Commissioners temporarily suspended the order as to all the other railroads in Florida, but did not revoke the same. And your orator avers and charges on information and belief that the said defendants intend to enforce said rate and to fur-
65 ther inflict loss and injury upon the defendant, the Florida East Coast Railway Company.

A statement showing reduction of freights and increase of car tonnage by the Railroad Commission since 1905, is hereto annexed, marked Exhibit "19," which your orator prays may be taken as part of this bill.

REDUCTION OF PASSENGER RATES.

And, further complaining, your orator says that on May 7, 1906, one J. C. Vertrees made complaint in writing to the defendants, the Railroad Commissioners, that he was charged more than three cents per mile for passage from Daytona to Palatka, a distance of fifty-one miles, and on the 24th day of May, A. D. 1906, the defendants, the Florida Railroad Commissioners, by its chairman, served notice on the Florida East Coast Railway Company, of a meeting of said Commissioners on the 7th day of June, A. D. 1896, at Tallahassee, to consider the advisability of prescribing a three-cent-per-mile rate for the use of the Florida East Coast Railway Company north of Homestead, Florida, and thereupon, on the said 7th day of June, A. D. 1906, the Florida East Coast Railway Company, by its proper officers and representatives, appeared before the defendants, the Railroad Commissioners of Florida, and represented to them the financial condition of the Florida East Coast Railway Company and advised and informed the said Railroad Commissioners that, by reason of the cost of carrying passengers on the line of said road, being in excess of three cents per mile, and by reason of the existing deficit, the said Railroad Company could not carry passengers at a maximum rate of three cents per mile, and did then and there fully advise and inform the defendants, the Railroad Commissioners, of the financial condition of said road. And your orator further avers and charges that the said Florida East Coast Railway Company, by its proper officers, did exhibit to the said Railroad Commissioners a tabulated statement showing that the aggregate earnings of said road in excess of three cents per
mile from passengers on certain distances aggregated
66 over $14,000 per annum as follows:

Between Jacksonville and St. Augustine	$7,593.00
Between Palatka and points south, and points south and Palatka	1,625.00
Over the Ormond Bridge	689.85
Over the Palm Beach Bridge	4,752.25

And that, if the Railroad Commissioners put a maximum of three cents per mile on all parts of said road it would involve an annual loss of $14,000 per annum and an additional deficit of over $14,000 per annum; and your orator further says that the said Railroad Commissioners were fully advised and informed of the financial condition of the Florida East Coast Railway Company and were further fully advised and informed that the said Florida East Coast Railway Company

then had a floating indebtedness of nearly two millions of dollars bearing 5 per cent interest annually, and that to put in force the rates demanded would cause an additional loss to the Florida East Coast Railway Company and still further increase the deficit between its earnings and its expenditures. And your orator further avers that your orator, by its attorney, then and there requested the defendants, the Railroad Commissioners, to make investigation of the condition of the road and to ascertain the truth of the statements made to them as to its deficit, and then and there offered to submit to the said Railroad Commissioners all of the proof necessary showing that the condition of the road would not warrant any further reduction in the rates charged for transporting passengers on its road. And your orator further avers and charges that, notwithstanding the matters and things set forth herein, the said defendants, the Florida Railroad Commissioners, on the 13th day of June, A. D. 1906, without
67 further investigation and without ascertaining the truth of the statement and representations made to them as to the condition of the defendant, the Florida East Coast Railway Company, and without making any other or further investigation, designing to wrong, injure and oppress the said Florida East Coast Railway Company and regardless of the condition of the road and regardless of the existing and continuing deficit of said road, unreasonably and unjustly issued an order providng that the full rate to be charged for the transportation of passengers over the line of defendant, the Florida East Coast Railway Company's road north of Homestead, Florida, should be three cents per mile, and the half rate one and a half cents per mile for each passenger, and further providing that children under five years of age should be carried free, and between the ages of five and twelve children should be charged half fare.

And your orator avers and charges that said aggregate of over $14,000 was paid during the said fiscal year by over 75,000 passengers, of whom only two persons complained of the charge, and upon the complaint of these two passengers the defendants, the Florida Railroad Commissioners, made the order hereinbefore set forth, and with full knowledge of all the facts and circumstances of the condition of the Florida East Coast Railway Company, deliberately sought to inflict upon it an additional annual loss and an additional deficit of over $14,000 per annum.

And your orator avers and charges that, the premises considered, it was not reasonable and just for said Florida Railroad Commissioners to require the said Florida East Coast Railway Company to charge not exceeding three cents per mile

for transportation of passengers; that it was not reasonable and just for the said defendant to require the said Florida East Coast Railway Company to charge only one and one-half cents for children between the ages of five and twelve years,

and that the said Florida Railroad Commissioners were
68 without authority of law to order and require the defendant, the Florida East Coast Railway Company, to carry children under five years of age free of charge, and that, by reason of said order, an additional loss exceeding $50,000 per annum has been and is being inflicted upon said Florida East Coast Railway Company; and the power of said Railway Company to pay the interest on the bonds (for the owners of which your orator is the Trustee) further impaired and depreciated and great wrong and injury done to the owners of said bonds.

And your orator further avers and charges, by reason of the matters and things hereinbefore set forth in the foregoing subdivison of this bill, that the defendants, the Railroad Commissioners of the State of Florida, are taking the property of the Florida East Coast Railway Company without just compensation to said Company, and are exercising and asserting powers and authority without due process of law and in conflict with the Constitutions of the State of Florida and of the United States of America.

A copy of the complaint and order of the Railroad Commissioners are hereto annexed, marked Exhibt "18," which your orator prays may be taken as part of this bill.

AGGREGATE LOSSES.

And, further complaining, your orator says that, by reason of the orders and actions of said Railroad Commissioners the revenues of said road have been and are decreased as follows, to-wit:

By the order to establish an agent at Cocoanut Grove, per annum	$1,200
By the order of reducing rate for passengers to a maximum of 3c per mile	50,000
By the proposed reduction of rates on lumber	30,000

And your orator avers and charges that, by reason of
69 the matters and things hereinbefore set forth, the amount involved in this suit is largely more than two thousand dollars: that the establishing of an agent at Cocoanut Grove and the reduction of passenger rates to a maximum of 3c per mile alone involve the sum of over $15,000 annually.

And your orator further avers and charges that the average

annual deficit on the Florida East Coast Railway is now over $254,000 per annum, and that the effect of these last orders of the defendants, the Railroad Commissioners, is, and will be, to increase the said deficit to an aggregate of over three hundred thousand dollars per annum.

INCREASED PASSENGER RATES NECESSARY.

And, further complaining, your orator says that it is not reasonable and just to require the defendant, the Florida East Coast Railway Company, to transport passengers for less than the cost of transporting them, and that it is not reasonable and just to require the said defendant, the Florida East Coast Railway Company, to maintain an agent at any point where the cost of maintaining such agent exceeds 33 per cent of the gross receipts at such station.

And your orator says that, by reason of the matters and things herein set forth, the defendants, the Florida Railroad Commissioners, are appropriating the property of the Florida East Coast Railway Company without just compensation and without due process of law and in violation of law and of the Constitution of the State of Florida and of the United States and in conflict with the letter and spirit of the law establishing the Railroad Commission of Florida and to the great wrong and injury of the owners of the bonds of which your orator is the Trustee.

70 A tabulated statement of tickets sold during the twelve months ending April 30, 1906, at rates in excess of the three cents per mile between Jacksonville and St. Augustine and between Palatka and points south and across the Ormond and Palm Beach bridges is hereto annexed, marked Exhibit "20," which your orator prays may be taken as part of this bill.

And, further complaining, your orator says that the defendants, the Railroad Commissioners of Florida permit and authorize the Florida East Coast Railway Company to charge a maximum rate of 4c per mile for transporting passengers on the line of its road south of Miami and that the same defendants, as Railroad Commissioners, permit and authorize divers other railroads within the State of Florida to charge a maximum rate of 4c per mile for transporting passengers on certain lines, although on most of said other roads mixed passenger

and freight trains are run, and the only additional cost for transporting passengers is the expense of a passenger coach attached to a freight train. And your orator avers and charges that it is not reasonable and just, the premises considered, to impose upon the Florida East Coast Railway Company the losses resulting from transporting pasengers at a maximum rate of 3c per mile.

71 ADDITIONAL AGENTS THREATENED.

And, further complaining, your orator avers and charges on information and belief that the action of the defendants, the Railroad Commissioners, in ordering a resident agent located at Cocoanut Grove has encouraged the people at a large number of non-agency stations to demand that resident agents be located thereat, and that the Florida East Coast Railway Company is now threatened with other petitions to the defendants, the Florida Railroad Commissioners, to have resident agents established at such non-agency stations; and your orator has reason to believe and does believe that, unless the Florida East Coast Railway Company is enjoined from establishing such resident agents, and the defendants, the Florida Railroad Commissioners, are enjoined from ordering the establishment of resident agents at such non-agency stations further and irreparable injury will be done to the Florida East Coast Railway Company, and further and irreparable injury will be done to the owners of the bonds of which your orator is the Trustee; that great additional expenditures will be required in the construction of station buildings and agents' cottages, and in the payment of salaries and the expenses of such agents; that the deficit now existing will be largely increased, and the ability of the Florida East Coast Railway company to pay the interest on its bonded indebtedness will be still further impaired, and the value of the bonds issued under and by virtue of the mortgages heretofore set forth still further injured and depreciated.

BORROWING MONEY TO PAY INTEREST.

And, further complaining, your orator avers on information and belief that during the thirteen fiscal years ending June 30, 1906, the Florida East Coast Railway Company has not earned and has not been permitted to earn its interest
72 charges; that during said thirteen years its gross receipts have been $18,762,110.96, and its gross expenses, including taxes, betterments and equipments, have been

$17,069,020.00, showing net earnings of only $1,693,090.96, or less than 1 per cent profit on the gross earnings, and not exceeding ¾ of 1 per cent profit on the value of the property; that during the same thirteen fiscal years the aggregate of interest on the funded and floating indebtedness of the Florida East Coast Railway Company was $5,004,517.09, showing a deficit of $3,311,426.13 on interest account; and your orator avers and charges that the rate of interest on the bonded indebtedness, to-wit: 5 per cent per annum is reasonable and just and much less than the average rate of interest prevailing in Florida.

And your orator avers and charges that said interest has been paid with borrowed money in part and by capitalizing the same, thereby increasing the fixed charges of the road, and further impairing the ability of the road to pay the interest on the bonds issued under the mortgages as aforesaid and thereby further depreciating the value of the bonds for which the complainant is the Trustee, and threatening the owners and holders of such bonds with irreparable injury and loss.

INJURIOUS ACTION OF THE FLORIDA EAST COAST RAILWAY COMPANY.

And, further complaining, your orator avers and charges that the defendant, the Florida East Coast Railway Company, without due and proper regard to the interests of the railroad and to the security of the bondholders unwisely and to the wrong and injury of the holders of the bonds issued
73 under the mortgages, of which the complainant is Trustee, made the experiment of reducing the maximum rate for passengers to a maximum of 3c per mile on certain lines of travel on said road.

And your orator avers and charges on information and belief that there would have been the same increase of passenger travel on the Florida East Coast Railway at the 4c per mile maximum rate that there has been at the 3c per mile maximum rate, and that if the 4c per mile maximum rate had been continued, the increased revenue derived therefrom would have been amply sufficient to have covered the deficit and to have enabled the defendant, the Florida East Coast Railway Company, to have paid for its betterments and equipments and to have paid the interest on its bonded indebtedness and without incurring any floating indebtedness and without the necessity of borrowing money to pay the expenses and fixed charges of the Florida East Coast Railway Company.

And your orator avers and charges on information and be-

lief that it is necessary for the protection of the bondholders and for the solvency of the Florida East Coast Railway Company that the maximum rate per mile for carrying passengers shall exceed 3c per mile.

And further complaining, your orator avers and charges that there is danger of the defendant, the Florida East Coast Railway Company's, complying with the several orders of the defendants, the Railroad Commissioners, and reducing the maximum rate of travel of passengers to 3c per mile, and that such reduction of rates will increase the deficit now existing and further prevent the payment of the interest on the bonded indebedtness, compel the borrowing of additional money to pay for betterments and equipments and to pay the interest on the bonded indebtedness, and result in irretrievable and
74 irreparable injury to the defendant, the Florida East Coast Railway Company, and to the holders of the bonds issued under the several mortgages, and of which your orator is Trustee.

EXPOSURE TO FINE.

And, further complaining, your orator says that, if the Florida East Coast Railway Company should refuse to obey the several orders of the defendants, the Florida Railroad Commissioners, under and by virtue of the laws of Florida, the said defendants, the Florida Railroad Commissioners, are empowered to impose fines upon the Florida East Coast Railway Company as high as $3,000 for each violation of the orders of the said Railroad Commissioners; that, under and by virtue of said laws the Florida East Coast Railway Company will incur a liability of being fined to a maximum of $5,000 for each and every passenger it might charge more than 3c per mile for transportation; that it is subject to the same maximum fine for refusing to establish a resident agent at any point the defendants, the Railroad Commissioners, may order and designate, and that the effect of imposing the paying of such fines would be to still further increase the deficit of the Florida East Coast Railway Company and impair the value of the bonds of which your orator is the Trustee.

MULTIPLICITY OF SUITS.

And, further complaining, your orator says that it is impracticable and impossible to determine the question of the validity of the order of the Railroad Commissioners by bringing suit against the passengers to recover the difference be-

tween the 3c maximum rate per mile and the 4c maximum rate per mile by reason of the lare number of passengers and the small sum involved with each and the impossibility of
75 obtaining the names of the great majority of the passengers traveling on the line of the road; such a method of procedure could not be followed; that a separate and distinct suit would have to be brought against each passenger before a Justice of the Peace, involving a multiplicity of suits, and an expenditure far in excess of any sums it could recover; that, in the matter of the establishment of resident agents at any points separate and distinct suits would be necessary in each case in which the railroad commissioners ordered an agent established at any point where the gross earnings did not justify the location of an agent, and this would also involve a multiplicity of suits and a large expenditure of money therein in the prosecution of said suits, further increasing the deficit of the Florida East Coast Railway Company; and that, by reason of the amount involved not giving the Supreme Court of the State of Florida the right to hear and determine the question, it would be impossible to obtain an adjudication of the questions raised before the final appellate tribunal of the State.

INSOLVENCY THREATENED.

And, further complaining, your orator avers and charges that, by reason of the large deficit between the income and the necessary expenditures and fixed charges of the Florida East Coast Railway Company, accumulating every year, and by further reason of the orders and actions of the defendants, the Railroad Commissioners as hereinafter set forth, preventing the earning of a reasonable profit to meet the interest on the bonded indebtedness, the Florida East Coast Railway Company is threatened with insolvency; that said railway company will soon have reached the limit of ability to borrow
76 money to pay interest charges and to pay for necessary equipments and betterments; that the action of the defendants, the Florida Railroad Commissioners, in ignoring the condition of the road and the existing deficit and requiring the Florida East Coast Railway Company to establish resident agents at any points where the expenses of such agents will aggregate from 33 per cent to 40 per cent of the gross earnings of such stations, and the orders of the said Railroad Commissioners reducing the maximum rate for passengers to 3c per mile, are a disregard and violation of the laws of the State of Florida, are unreasonable and unjust, and evidence of a purpose on the part of the Florida Railroad Commissioners to oppress and injure the Florida East Coast Railway Com-

pany, and to impair and destroy the value of the bonds for which the complainant is Trustee.

And your orator avers and charges that, unless restrained by the orders and decrees of a Court of Equity, the defendants, the Florida Railroad Commissioners, will inflict further great and irreparable injury upon the defendant, the Florida East Coast Railway Company, and will irretrievably and irreparably impair and destroy the value of the bonds issued under the several mortgages described herein, and of which your orator is Trustee.

All of which is contrary to equity and good conscience, and tends to the manifest wrong, injury and oppression of your orator in the premises.

To the end, therefore, that justice and equity may be done, your orator prays:

77 1. That by order and decree of this Honorable Court the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, as Railroad Commissioners of the State of Florida, their agents, servants, attorneys and employes may be perpetually enjoined and restrained from enforcing, or requiring the Florida East Coast Railway Company to enforce or obey the order of said defendants, the Florida Railroad Commissioners, dated June 13, 1906, providing and ordering that the full rate to be charged for the transportation of passengers over the line of the defendants, the Florida East Coast Railway Company, north of Homestead, Florida, shall be 3c per mile, and the half rate shall be one and a half cents per mile for each passenger; and further providing that children under the ages of five years shall be carried free and children between the ages of five and twelve to be charged half fare.

2. That by the further order and decree of this Honorable Court, the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, as Railroad Commissioners of the State of Florida, their agents, servants, attorneys and employes may be by the orders and decree of a Court of Equity, the defendants, the Florida Railroad Commissioners, will inflict further great and irreparable injury upon the defendant, the Florida East Coast Railway Company, and will irretrievably and irreparably impair and destroy the value of the bonds issued under the several mortgages described herein, and of which your orator is Trustee.

All of which is contrary to equity and good conscience, and tends to the manifest wrong injury and oppression of your orator in the premises.

To the end, therefore, that justice and equity may be done, your orator prays:

78 1. That by the order and decree of this Honorable Court the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, as Railroad Commissioners of the State of Florida, their agents, servants, attorneys and employes may be perpetually enjoined and restrained from enforcing, or requiring the Florida East Coast Railway Company to enforce or obey, the order of the said defendants, the Florida Railroad Commissioners, dated June 13, 1906, providing and ordering that the full rate to be charged for the transportation of passengers over the line of the defendant, the Florida East Coast Railway Company, north of Homestead, Florida, shall be 3c per mile, and the half rate shall be one and a half cents per mile for each passenger; and further providing that children under the age of five years shall be carried free, and children between the ages of five and twelve to be charged half fare.

2. That by the further order and decree of this Honorable Court the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, as Railroad Commissioners of the State of Florida, their agents, servants, attorneys and employes may be perpetually enjoined and restricted from enforcing and carrying into effect the order issued to the defendant, the Florida East Coast Railway Company, dated the 30th day of April, 1906, where the defendant, the Florida East Coast Railway Company, was ordered to establish an agent at Cocoanut Grove, Florida, and the said Railroad Company given thirty days from April 30, 1906, to establish said agent.

3. That by the further order and decree of this Honorable Court the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, as Railroad Commissioners of the State of Florida, their aents, servants, attorneys and employes may be perpetually enjoined and restrained from enforcing and carrying into effect the order of the said defendants,

79 the Florida Railroad Commissioners, dated May, 1905, reducing the rate of freight on lumber on the line of the defendant, the Florida East Coast Railway Company.

4. That by the further order and decree of this Honorable Court the defendant, the Florida East Coast Railway Company, its servants, agents attorneys and employes may be perpetually enjoined and restrained from carrying out or obeying the order of the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, as Railroad Commissioners of the State of Florida, reducing the rate per mile per passenger to 3c maximum under the order of the defendants, the Railroad Commissioners, dated the 13th day of June, 1906, pro-

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viding that the full rate to be charged for the transportation of passengers over the line of the defendant, the Florida East Coast Railway Company, north of Homestead, Florida, shall be 3c per mile, and the half rate shall be one and a half cents per mile for each passenger; and further providing that children under five years of age shall be carried free, and children between the ages of five and twelve to be charged half fare.

5. That by the further order and decree of this Honorable Court the defendant, the Florida East Coast Railway Company, its servants, agents, attorneys and employes may be perpetually enjoined and restrained from carrying out or obeying the order of the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, as Railroad Commissioners of the State of Florida, dated the 30th day of April, 1906, in which order the said Railroad Commissioners, defendants herein, ordered the defendant, the Florida East Coast Railway Company, to establish an agent at Cocoanut Grove, and restraining the said Florida East Coast Railway Com-
80 pany, from establishing any resident agent at any station on the line of defendants' road where the establishing of such agent would involve a loss to the defendant, the Florida East Coast Railway Company.

6. That by the further order and decree of this Honorable Court the defendant, the Florida East Coast Railway Company, its servants, agents, attorneys and employes be perpetually enjoined and restrained from obeying the order of May, 1905, issued by the defendants, Newton Blitch R. Hudson Burr and Thomas L. Morgan, as Railroad Commissioners of the State of Florida, reducing the freight rate on lumber on the line of the Florida East Coast Railway Company.

7. That by the further order and decree of this Honorable Court the defendants, William H. Ellis, Attorney General of the State of Florida; Augustus G. Hartridge, State Attorney of the Fourth Judicial Circuit of Florida; Benjamin P. Calhoun, State Attorney of the Eighth Judicial Circuit of Florida, and John C. Jones, State Attorney of the Eighth Attorney of the Seventh Judicial Circuit of Florida, their servants, agents, attorneys and employes be perpetually enjoined and restrained from instituting any suit or prosecuting the same against the defendant, the Florida East Coast Railway Company, to enforce or to carry into effect the order of the defendants, the Florida Railroad Commissioners, dated the 13th day of June 1906 fixing the rate per mile for transporting passengers at 3c maximum, and providing that the full rate to be charged for the transportation of passengers over the line of the defendant, the Florida East Coast Railway Company, north of Homestead, Florida, shall

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be 3c per mile, and the half rate shall be 1½c per mile for each passenger, and further providing that children under five years of age shall be carried free, and children between the ages of five and twelve shall be charged half fare.

81 And further perpetually enjoining and restraining the above-named defendants, the Attorney General and State Attorneys, their servants, agents, attorneys and employes from instituting any suit or prosecuting the same against the defendant, the Florida East Coast Railway Company, to enforce the order of the defendants the Railroad Commissioners of Florida, dated the 30th day of April, 1906, ordering and requiring the defendant, the Florida East Coast Railway Company, to establish an agent at Cocoanut Grove. And also perpetually enjoining and restraining the above-named defendants, the Attorney General and State Attorneys, from instituting any suit or prosecuting the same against the defendant, the Florida East Coast Railway Company, to enforce the order of the defendants, the Railroad Commissioners of the State of Florida, dated in May, 1905, reducing the rate of freight on lumber on the line of the Florida East Coast Railway Company.

And also perpetually enjoining and restraining the defendants, William H. Ellis, Attorney General of the State of Florida; Augustus G. Hartridge, State Attorney for the Fourth Judicial Circuit of Florida; Augustus B. Long State Attorney for the Eighth Judicial Circuit of Florida, and John C. Jones, State Attorney for the Seventh Judicial Circuit of Florida, their servants, agents attorneys and employes from instituting any suit or prosecuting the same to collect any penalty imposed by the defendants, as Railroad Commissioners of the State of Florida, for failure to obey or carry into effect the several orders of the said Railroad Commissioners heretofore described and set forth.

82 That, by the further order and decree of this Honorable Court, the defendants Newton Blitch, R. Hudson Burr and Thomas L. Morgan, Railroad Commissioners of the State of Florida, ordering and requiring the defendants, the Florida East Coast Railway Company, to charge a maximum rate of 3c per mile for transporting passengers on its line north of Homestead, Florida, and one and a half cents (1½c) per mile for half rate, and placing the rate to be charged children between the ages of 5 and 12 years one and a half cents (1½c) per mile, and providing that children under five years of age shall be carried free, may be declared unreasonable and unjust and in volation of the Constitution of the State of Florida and of the United States, as taking the property of the defendant, the Florida East Coast Railway Company, without

just compensation; and that the order of the said defendants, the Railroad Commissioners, without considering the condition of the Florida East Coast Railway Company, may be declared unreasonable and unjust and without due process of law and in violation of the Constitution and laws of the State of Florida and of the Constitution and laws of the United States of America.

9. That, by the further order and decree of this Honorable Court, the order of the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, Railroad Commissioners of the State of Florida, ordering and requiring the defendant, the Florida East Coast Railway Company, to establish an agent at Cocoanut Grove, Florida, may be declared unreasonable and unjust and in violation of the Constitution of the State of Florida and of the United States, as taking property of the defendant, the Florida East Coast Railway Company, without just compensation; and that the order of said defendants, the
83 Railroad Commissioners, without considering the condition of the Florida East Coast Railway Company, and its existing deficit, may be declared unreasonable and unjust, and without due process of law and in violaion of the Constitution of the State of Florida and of the Constitution of the United States of America.

10. That, by the further order and decree of this Honorable Court, the order of the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, Railroad Commissioners of the State of Florada, ordering and requiring the defendant, the Florida East Coast Railway Company, to reduce the rate of freight on lumber on its line of road, may be declared unreasonable and unjust and in violation of the Constitution of the State of Florida and of the United States, as taking the property of the defendant, the Florida East Coast Railway Company, without just compensation; and that the order of the said defendants, R[illegible]road Commissioners, without considering the condition of the Florida East Coast Railway Company and its existing deficit may be declared unreasonable and unjust, and without due process of law and in violation of the Constitution and laws of the United States of America.

11. That, by the further order and decree of this Honorable Court, a temporary restraining order, *pendente lite*, be issued, restraining and enjoining the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, as Railroad Commissioners of the State of Florida, their servants, agents, attorneys and employes from enforcing and carrying into effect the order issued by them, dated June 30, 1906, ordering and requiring the Florida East Coast Railway to charge a maximum rate of 3c per mile for transporting passengers over its line of road

north of Homestead, Florida, and providing that children between the ages of five and twelve shall be charged only
84 1½c per mile, and that children under five years of age shall be carried free; and a temporary restraining order, *pendente lite*, restraining and enjoining the said defendants, as Railroad Commissioners, their servants, agents, attorneys and employes, from enforcing and carrying into effect the order issued to the defendant, the Florida East Coast Railway Company, dated the 30th day of April, 1906, ordering the said Florida East Coast Railway Company to establish an agent at Cocoanut Grove; and also a temporary restraining order, *pendente lite*, enjoining and restraining the said defendants, as Railroad Commissioners, their agents, servants, attorneys and employes, from enforcing or carrying into effect the order of May, 1905, reducing the rate of freight on lumber on the line of the defendant, the Florida East Coast Railway Comjoining and restraining the Florida East Coast Railway Company, from obeying or carrying into effect the order of the said defendants, the Railroad Commissioners, fixing the rate for transporting passengers on the line of the Florida East Coast Railway Company north of Homestead, Florida, at a maximum rate of 3c per mile, and further provides that children between the ages of five and twelve shall be charged half fare, and further providing that children under five years of age shall be carried free; and a further temporary restraining order, *pendente lite*, enjoining and restraining the defendant, the Florida East Coast Railway Company, from obeying or carrying into effect the order of the Florida Railroad Commissioners, dated the 30th day of April, 1906, requiring the said Florida East Coast Railway Company, from obeying and carrying into effect the order of the said Florida Railroad Commissioners, dated May, 1905, reducing the rate of freight on lumber on the line of said road; also a temporary restraining order, *pendente lite*, enjoining and restraining the defendants, William H. Ellis, Attorney General of the State of Florida; Augustus G. Hartridge, State Attorney for the
85 Fourth Judicial Circuit of Florida; August B. Long, State Attorney for the Eighth Judicial Circuit of Florida, and John C. Jones, State Attorney for the Seventh Judicial Circuit of Florida, their servants, agents and employes, from instituting any suit or prosecuting the same to enforce or carry out or put into effect the several orders hereinbefore described and set forth, or from instituting or prosecuting any suit to recover any penalty imposed on the Florida East Coast Railway Company by the defendants, the Florida Railroad Commissioners, until the further order and decree of this Honorable Court.

And that your orator may have such other and further relief as to equity and good conscience may seem meet in the premises.

May it please your Honor to grant unto your orator the writ of subpœna of the United States of America to be directed to the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, Railroad Commissioners of the State of Florida; the Florida East Coast Railway Company, a corporation duly chartered and existing under the laws of the State of Florida; William H. Ellis, Attorney General for the State of Florida; Augustus C. Hartridge, State Attorney for the Fourth Judicial Circuit of Florida; Augustus B. Long, State Attorney for the Eighth Judicial Circuit of Florida, and John C. Jones, State Attorney for the Seventh Judicial Circuit of Florida, to be issued out of and under the seal of this Honorable Court, and full, true, direct and perfect answers make to all and singular the matters and things contained in this bill of complaint, your orator expressly waiving an answer under oath from the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, Railroad Commissioners of the State of Florida; William H. Ellis, Attorney General of the
86 State of Florida; Augustus C. Hartridge, State Attorney for the Fourth Judicial Circuit of Florida; August B. Long, State Attorney for the Eighth Judicial Circuit of Florida, and John C. Jones, State Attorney for the Seventh Judicial Circuit of Florida, but requiring the defendant, the Florida East Coast Railway Company, to full, true, direct and perfect answers make under oath to the matters and things contained herein.

May it please your Honor to grant unto your orator Writs of Injunction of the United States, both perpetual and temporary, as hereinbefore prayed, to be directed to the defendants, Newton Blitch, R. Hudson Burr and Thomas L. Morgan, Railroad Commissioners of the State of Florida; the Florida East Coast Railway Company; William H. Ellis, Attorney General of the State of Florida; Augustus C. Hartridge, State Attorney for the Fourth Judicial Circuit of Florida; August B. Long, State Attorney for the Eighth Judicial Circuit of Florida, and John C. Jones, State Attorney for the Seventh Judicial Circuit of Florida; Augustus B. Long, State Attorney for employes, in manner and form hereinbefore prayed.

And your orator will ever pray, etc.

COLONIAL TRUST COMPANY.

By .....

Its.....

.....

Solicitor for Complainant.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

Personally appeared before me, ..., who, being duly sworn, says that he is the ..... of the Colonial Trust Company, a corporation duly chartered and existing under the laws of the State of New York, and having its principal place of business in the State of New York; that the Colonial Trust Company is the complainant in the above bill; that he has read the same and subscribed his name and affixed the seal of the corporation at the end thereof, and that he knows the contents thereof; that the matters and things stated therein are true of his own knowledge except as to the matters and things which are therein stated to be on information and belief, and that as to those matters he believes them to be true; that he knows of his own knowledge that the complainant, the Colonial Trust Company, is the Trustee for the owners and holders of the bonds under the mortgages described and set forth in said bill of complaint; that his information as to the deficit existing in the finances of the Florida East Coast Railway Company and his information as the losses sustained by the Florida East Coast Railway Company in the operation of its passenger trains, and his informaton as to the other matters and things set forth in the said bill and in the Exhibits thereto are obtained from the affidavits of J. P. Beckwith, W. H. Chambers and divers other persons and from information derived from the Solicitor of the Colonial Trust Company, Alex. St. Clair-Abrams, all of which affidavits were presented to and read by him before making this affidavit; that he believes such information
88 to be true; that he believes upon the information therein set forth that there has been and is a deficit of over $3,311,000 between the receipts and expenditures of the Florida East Coast Railway Company for the thirteen years ending June 30, 1906; that he believes from the information furnished to him that passenger trains on said road cannot be operated except at a loss at a maximum rate of 3c per mile for transporting passengers; that, on the information he has obtained, as hereinbefore set forth, he believes that great and irreparable injury will be done to the bonds of which the Colonial Trust Company is Trustee if the deficit continues and the Florida East Coast Railway Company is required to borrow money every year with which to pay the interest on said bonds; that he believes, from the information furnished him, that the rate of interest on said bonds, to-wit: 5 per cent per annum, is a fair rate of interest.

Affiant further says that on the information furnished him he believes that, unless the Florida East Coast Railway Company shall be permitted to charge a reasonable and just rate for transporting passengers exceeding 3c maximum per mile, the annual deficit will continue and that great and irreparable injury will be done to the bonds of which the Colonial Trust Company is Trustee.

Sworn to and subscribed before me this ..... day of ..... A. D. 1906.

.....

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89

EXHIBIT L.

LETTERS PATENT STATE OF FLORIDA.

TO ALL TO WHOM THESE PRESENTS SHALL COME—GREETING:

WHEREAS, John Bushnell, Geo. W. Colton, Geo. Cheseboro, W. A. Harris, L. B. Dryer and John Bushnell, Trustee, have filed in the office of the Secretary of State certain Articles of Association, with a view to forming a corporation to be known as "Florida Coast and Gulf Railway Company," and with a capital of One Million ($1,000,000) Dollars, for the purpose of constructing, maintaining and operating a Railway from a point on the westerly side of the St. Johns River, at or near the City of Jacksonville, in Duval County, Florida, to a point on the waters of the Gulf of Mexico, at or near the city of Tampa, Hillsborough County, Florida.. Said road is about 325 miles long, and passes through Duval, St. Johns, Putnam, Volusia, Brevard, Orange, Osceola, Dade, Polk and Hillsborough, all of said Counties being in the State of Florida, and have complied with the statutes in such cases made and provided.

THEREFORE, THE STATE OF FLORIDA HEREBY GRANTS unto the above-named persons, their successors and assigns, full authority by and under the said name of "Florida Coast and Gulf Railway Company," to exercise their powers and privileges of a corporation for the purposes above stated, and in accordance with their said Articles of Association and the laws of the State.

90 IN WITNESS WHEREOF, These presents have been attested with the Great Seal, and signed and countersigned by the Governor and Secretary of Satte of the State of Florida, at Tallahassee, the 28th day of May, A. D. 1892.

FRANCIS P. FLEMING,
Governor.

JNO. L. CRAWFORD,
Secretary of State.

[Great Seal of the State of Florida.]

ARTICLES OF INCORPORATION

OF

FLORIDA COAST AND GULF RAILWAY COMPANY.

We, the undersigned, do hereby make and sign Articles of Association, for the purpose of organizing the Florida Coast and Gulf Railway Company, under the provisions of the laws of the State of Florida, to construct, operate and maintain a railroad for public use in the conveyance of persons and property, or to operate and maintain a railroad now constructed or partly constructed, for public use in the conveyance of persons and property.

First. The name of the Company shall be, "Florida Coast and Gulf Railway Company."

Second. The places from which and to which the road is to be constructed, maintained and operated, are from a point on the westerly side of the St. Johns River at or near the City of Jacksonville, in Duval County, Florida, to a point on the waters of the Gulf of Mexico, at or near the city of Tampa, Hillsborough County, Florida.

Third. Said road is about three hundred and twenty-five miles in length.

91 Fourth. The names of the Counties through and into which said road, with ts main line and branches, runs, are Duval, St. Johns, Putnam, Volusia, Brevard, Orange, Osceola, Dade, Polk and Hillsborough, all of said Counties being in the State of Florida.

Fifth. The amount of capital stock is one million dollars ($1,000,000) divided into ten thousand shares of one hundred dollars each.

Sixth. The number of directors shall be five (5). and the directors for the first year, and their places of residence are, John Bushnell, Plainfield, in the State of New Jersey; George W. Colton, Brooklyn, in the State of New York; George Cheseboro, Brooklyn, in the State of New York; W. A. Harris, Brooklyn, in the State of New York, and L. B. Dryer, New York City, in the State of New York.

[Signed]

JOHN BUSHNELL,
Plainfield, N. J. (Seal)
GEO. W. COLTON,
Brooklyn, N. Y. (Seal)
GEO. CHESEBORO,
Brooklyn, N. Y. (Seal)
W. A. HARRIS,
Brooklyn, N. Y. (Seal)
L. B. DRYER,
New York City, N. Y. (Seal)

We, the undersigned, do subscribe to the capital stock of "Florida Coast and Gulf Railway Company," the amount set against our names, and agree to pay for and take the same.

Name	City	Residence State	Number of Shares
John Bushnell	Plainfield	New Jersey	One
Geo. W. Colton	Brooklyn	New York	One
Geo. Cheseboro	Brooklyn	New York	One
W. A. Harris	Brooklyn	New York	One
L. B. Dryer	New York	New York	One
John Bushnell, Trustee	Plainfield	New Jersey	Nine thousand nine hundred and ninety-five.

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.*

Before me, Charles Edgar Mills, a Commissioner for Florida, personally came John Bushnell, George W. Colton, and W. A. Harris, who, being separately sworn, each deposes and says that the names subscribed to the foregoing Articles of Association of the "Florida Coast and Gulf Railway Company" are the genuine signatures of the parties named therein, and that it is intended in good faith to construct, mainatin and operate the road mentioned in the foregoing Articles of Association.

JOHN BUSHNELL,
GEO. W. COLTON,
W. A. HARRIS.

Sworn to and subscribed before me, this 20th day of May, A. D. 1892.

At New York City, New York, before me, a duly authorized Commissioner for Florida in New York.

[L. S.] CHARLES EDGAR MILLS,
Commissioner for Florida in New York,
115 and 117 Broadway, N. Y. City.

"Filed in office of Secretary of State of the State of Florida, May 28th, 1892."

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93 STATE OF FLORIDA
OFFICE OF SECRETARY OF STATE } *88.*

I, H. Clay Crawford, Secretary of State of the State of Florida, do hereby certify that the foregoing is a full true and correct copy of the Letters Patent issued to the Florida Coast and Gulf Railway Company on the 28th day of May, A. D. 1892, and of the Articles of Associaton of the Florida Coast and Gulf Railway Company, as the same appears on file in my office and as recorded in Book "C" of Articles of Incorporation, at pages 538, 539 and 540.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee the Capital, this the 9th day of November, A. D. 1904.

(Seal) H. CLAY CRAWFORD,
Secretary of State.

94 LETTERS PATENT STATE OF FLORIDA.

TO ALL TO WHOM THESE PRESENTS SHALL COME—GREETING:

WHEREAS, It appears that the Florida Coast and Gulf Railway Company, a corporation existing under the laws of Florida, at a general meeting of its stockholders, held for that purpose, on the 6th day of October, A. D. 1892, duly called as provided by law, adopted the following resolutions:

"Be it resolved by all the stockholders of this Company, at a general meeting, at which all the stockholders, either in person or by proxy, are present, that the name of this corporation be changed from Florida Coast and Gulf Railway Company to Jacksonville, St. Augustine and Indian River Railway Company."

And whereas a certificate under the common seal of said corporation, of the said resolution adopted as aforesaid was duly filed in the office of the Secretary of State, and due notice and publication thereof has been made in proper form, and it appearing that the resolution will be beneficial and lawful, and not injurious to the community and is in accord with the purposes of the Charter, the same is therefore approved:

Whereupon, the State of Florida hereby grants unto the Jacksonville, St. Augustine and Indian River Company, full authority to exercise the powers and privileges of such corporation under and in accordance with its Resolution, as adopted as aforesaid.

In witness whereof, these presents have been attested with the Great Seal and signed and countersigned by the Governor and Secretary of State of Florida, at Tallahassee, the 31st day of October, A. D. 1892.

FRANCIS P. FLEMING,
Governor.
JNO. L. CRAWFORD,
Secretary of State.

[Great Seal of the State of Florida.]

95 STATE OF FLORIDA
OFFICE OF SECRETARY OF STATE } 88

I, H. Clay Crawford, Secretary of State of the State of Florida, do hereby certify that the foregoing is a full, true and correct copy of the Letters Patent for change of name of the Florida Coast and Gulf Railway Company to Jacksonvile, St, Augustine & Indian River Railway Company, dated the 31st day of October, A. D. 1892, as the same appears on file in my office, and as recorded in Book "B" of Letters Patent, at page 8.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the 9th day of November, A. D. 1904.

H. CLAY CRAWFORD,
Secretary of State.

[Seal]

96 LETTERS PATENT STATE OF FLORIDA

TO ALL TO WHOM THESE PRESENTS SHALL COME—GREETING:

WHEREAS, It appears that the Jacksonville, St. Augustine and Indian River Railway Company, a corporation existing under the laws of the State of Florida, at a meeting held for that purpose on the 7th day of September, A. D. 1895, duly called as provided by law, adopted the following Resolution:

"Resolved, That the name of this corporation be changed, and that the name of the corporation shall be "Florida East Coast Railway Company," instead of Jacksonville, St. Augustine and Indian River Railway Company."

And whereas a certificate under the common seal of said corporation, of the said resolution adopted as aforesaid, was duly filed in the office of the Secretary of State, and due notice and publication thereof has been made in proper form, and it appearing that the resolution will be beneficial and lawful and not injurious to the community and is in accord with the purposes of the charter, the name is therefore approved:

WHEREUPON, the State of Florida hereby grants unto the said corporation under the name of Florida East Coast Railway Company, full authority to exercise the powers and privileges of such corporation under and in accordance with its charter and Resolution adopted as aforesaid.

IN WITNESS WHEREOF, These presents have been attested with the Great Seal, and signed and countersigned by the Governor and Secretary of State of the State of Florida, at Tallahassee, the Capital, this the 13th day of September, A. D. 1895.

(L. S.)

H. L. MITCHELL,
Governor.

JNO. L. CRAWFORD,
Secretary of State.

97 STATE OF FLORIDA
OFFICE OF SECRETARY OF STATE } *ss.*

I, H. Clay Crawford, Secretary of State of the State of Florida, do hereby certify that the foregoing is a true and correct copy of Letters Patent, changing the name of Jacksonville St. Augustine and Indian River Railway Company to Florida East Coast Railway Company, as recorded in this office, on page 232 of Book "B" of Letters Patent.

Given under my hand and the Great Seal of Florida, at Tallahassee, the Capital, this the 9th day of November, A. D. 1904.

(Seal.)

H. CLAY CRAWFORD,
Secretary of State.

98 FLORIDA EAST COAST RAILWAY COMPANY

TO

COLONIAL TRUST COMPANY OF NEW YORK
TRUSTEE

MORTGAGE.

THIS INDENTURE, Made this first day of September, one thousand eight hundred and ninety-seven, between Florida East Coast Railway Company, a corporation existing under and by virtue of the laws of the State of Florida, party of the first part, and the Colonial Trust Company, a corporation existing under and by virtue of the laws of the State of New York, party of the second part, WITNESSETH:

WHEREAS, The party hereto of the first part is a corporation authorized to construct, maintain and operate a line of railroad from the northerly or westerly bank of St. Johns River at or near the City of Jacksonville, Duval County, to a point at or near the city of Key West, in Monroe County, passing through the counties of Duval, St. Johns, Putnam, Volusia, Brevard, Dade, and Monroe, with branches, all within the State of Florida; And

WHEREAS, Under and in compliance with the laws of the State of Florida, it has extended the said route of said Railway from a point at or near its terminus in Jacksonville, in said Duval County, to and across the St. Johns River to a point within the corporate limits of the City of Miami, on Biscayne Bay, in said Dade County, with branches hereinafter named; And,

WHEREAS, In pursuance of its charter, the said party of the first part has constructed, and now owns and operates a railroad from the City of Jacksonville to the City of Miami, with branches, in Putnam County, extending from East Palatka, on the southerly side of the St. Johns River, and across the St.

99 Johns River to the City of Palatka, all in Putnam County, and with a second branch located about one mile and thirty-seven hundredths of a mile from East Palatka on its main line, and extending from its main line to the town of San Mateo, all in said Putnam County, and with a branch beginning at a point on its main line at or near the town of Ormond, and extending across the Halifax River to the Atlantic Ocean, all within said county of Volusia, and with a branch extending from the town or city of New Smyrna to the St. Johns River, at or near Blue Springs, all in Volusia County,

and with a branch beginning at a point on its main line at or near Rockledge, and extending to the Indian River, all in Brevard County, aforesaid, and with a branch extending from a point on its main line at West Palm Beach to the Atlantic Ocean, at or near Palm Beach, in said Dade County, and with a branch from its main line at the town of Miami, extending to a point on Biscayne Bay, all in Dade County,

AND WHEREAS, the party of the first part is authorized by law to execute a Trust Deed or Mortgage of its railroad, and of the franchises connected therewith, and of all its property, real, personal and mixed, to secure the payment of bonds issued for the construction and equipment of said road.

AND WHEREAS, said first party owes certain sums of money for the construction and equipment of said railroad; and whereas, for the purpose of paying the obligations incurred by said construction and said equipment of said railroad, the Board of Directors of said first party voted at a meeting duly called, and held in the City of St. Augustine on the thirtieth of August, A. D. 1897, to issue the bonds of said railway company in sums of One Thousand Dollars each, and to an amount not exceeding the sum of Seven Million Two Hundred and Fifty-Nine Thousand Dollars, upon its entire road and branches, bearing date the first day of September, A. D. 1897, and to have thirty years to run to maturity; to be payable, both principal and interest, in United States gold coin at the office of said Railway Company in New York City, with interest at the rate of three per cent per annum for the
100 first three years from the first day of September, A. D. 1897; and at the rate of four per cent per annum from the first day of September, A. D. 1900, to the first day of September, A. D. 1902; and with interest at five per cent per annum thereafter, all payable semi-annually. And to be sealed with the corporate seal of the party of the first part, signed by its President and Secretary, and duly authenticated by the Trustee hereunder; and to have interest coupons thereto attached, with the name of the Treasurer engraved thereon; which bonds, certificates and coupons are to be in the form following.

$1,000 $1,000

United States of America.
State of Florida.

FLORIDA EAST COAST RAILWAY COMPANY.

First Mortgage Gold Bond.

No. ..... No. .....

Bond due on the first day of September, A. D. 1927.

Interest three per cent per annum for the first three years; four per cent per annum for the two years following, and five per cent per annum thereafter until due, interest payable semi-annually.

THE FLORIDA EAST COAST RAILWAY COMPANY, for value received, hereby promise to pay to bearer (unless this bond be registered, and if this bond be registered, to the registered holder thereof) the sum of One Thousand Dollars in Gold Coin of the United States of America of the present standard weight and fineness, at its office in the City of New York, on the first day of September, in the year A. D. 1927, and to pay interest thereon in like coin semi-annually on the first day of March and the first day of September of each year, at the rate of three per cent per annum from the first day of September, A. D. 1897, to the first day of September, A. D. 1902, and five per cent per annum thereafter until all coupons are paid, on presentation and surrender of the annexed interest coupons as they shall severally become due.

101

This bond is one of a series of bonds numbered consecutively from One (1) to Seven thousand two hundred and fifty-nine (7259), both inclusive, the payment of which is equally secured by a Mortgage or Deed of Trust of even date herewith, conveying to the Colonial Trust Company of New York, Trustee, all the franchises, railroad, bridges equipment and other property of the Florida East Coast Railway Company, as described in said Mortgage upon the terms and conditions therein set forth.

If default be made in the payment of any semi-annual installment of interest on any of the said bonds, the principal of this bond may be made due and payable as provided in said Deed of Trust or Mortgage. This bond is subject to redemption before maturity, upon payment in like coin as aforesaid of the sum of One Thousand Dollars and accrued interest hereon, as provided in said Mortgage.

This bond shall pass by delivery unless registered. After registration of ownership certified hereon by the company's

transfer agent, no further transfer hereon, unless made on the Company's books, shall be valid unless the last transfer shall have been made to bearer, in which case this bond shall again become transferable by delivery until again registered in the name of the owner.

Registration of this bond shall not restrain the negotiability of the interest coupons by delivery merely.

This bond shall not be valid until the certificate authenticating the same, and endorsed hereon, shall have been signed by the Trustee under said Mortgage or Deed of Trust.

IN WITNESS WHEREOF, the said Railway Company has
102 caused its corporate seal to be signed by its President, the first day of September, A. D. 1897, and the annexed interest coupons to be executed with the engraved signature of its Treasurer.

FLORIDA EAST COAST RAILWAY COMPANY.

By ..... *President.*

Attest:

Secretary.

103 Coupons Nos. 1-2-3-4-5-6.

$15.

FLORIDA EAST COAST RAILWAY COMPANY will pay to the bearer on the first day of ..... FIFTEEN DOLLARS in gold coin of the United States of America, at its financial agency in the City of New York, being six months interest on its Bond No. .....

Treasurer.

Coupons Nos. 7-8-9-10.

$20

Same as above, except as to amount payable, said coupons each being for the sum of Twenty Dollars.

Coupons Nos. 11 to 60, inclusive.

Same as above, except as to amount payable, said coupons each being for the sum of Twenty-five dollars.

TRUSTEE'S CERTIFICATE.

It is hereby certified that this bond is one of the series of bonds issued under the Mortgage or Deed of Trust bearing date of the first day of September, A. D. 1897, referred to therein.

COLONIAL TRUST COMPANY, TRUSTEE.

By

President.

Now, therefore, THIS INDENTURE WITNESSETH, That
104 the said Florida East Coast Railway Company, party of the first part, in consideration of the premises and the sum of One Dollar to it duly paid by the said party of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, assigned, transferred and set over unto the said party hereto of the second part, and its successor or successors, all and singular the entire railway of said railway of the first part as hereinafter described, viz:

From the City of Jacksonville, in Duval County, in the State of Florida, to the city or town of Miami, in Dade County, in said State, as the same is now located and constructed through the counties of Ducal, St. Johns, Putnam, Volusia, Brevard and Dade, also all and singular the tenements, rights of way, ties, rails, bridges, structures, fixtures, turn-tables, tracks, "Y's," rights of trackage now owned or which may hereafter be acquired by the said party of the first part, also all the lands, tenements, herediments acquired or appropriated, or which may hereafter be acquired or appropriated, for the purposes of the said railway, and all easements thereunto belonging or in any wise appertaining; and all railways, ways, rights of way, stations, station buildings, station grounds, stores, storehouses, section-houses, tool-houses, tracks, sidings, turnouts, bridges, viaducts, culverts, fences and other structures, water tanks and other fixtures, car-houses, freight-houses, woodhouses and other fixtures, warehouses, machine shops, paint shops, repair shops, store buildings, store structures, buildings, erections, and fixtures of every kind and nature whatsoever; lease-holds, leases, rights under leases or under contracts or covenants or agreements, terms or parts of terms now held or hereafter to be acquired for the use of said railway or in connection therewith; or in the business thereon, and also all locomotives, engines, fixtures cars and
105 other rolling stock and equipment now held or hereafter to be acquired; and all machinery, stationary engines,

pile-drivers, hand-cars, tool-cars, tools, implements, fuel and material whatsoever now held or hereafter to be acquired; and all other property, real, personal or mixed, now held or which may hereafter be acquired for or in connection with the construction, operation, maintenance, repairing or replacement of the said railway or any part thereof, or as convenient or necessary for the uses or purposes thereof, and all rights, powers, privileges and franchises, tolls, rents issues and profits connected with or relating to the said railway or the uses and purposes thereof; and all other corporate franchises of every name and nature relating to said railway, including the franchise to operate the same, together with all the improvements or additions made or to be made to any or all of said property, estates, railroad or railroads, and their appurtenances, by the said party of the first part, and also all and every other right title, interest, property, or thing which the said party of the first part owns and holds, or may hereafter acquire or hold, necessary or convenient for the use, occupation and enjoyment of all or any of said railways, leases and property, rights privileges and franchises, or any part or portion thereof of the main line of said railway extending from a point in the City of Jacksonville, Duval County, to a point on the Miami river at Miami in Dade County, a distance of three hundred and sixty-six miles and eight-hundredths of a mile, with branches, from East Palatka to Palatka, a distance of one mile and eighty-hundredths of a mile, and a branch from its main line near East Palatka to San Mateo, a distance of three miles and four-hundredths of a mile, and a branch from its main line at Ormond across the Halifax River to a point on the Atlantic Ocean, all in the town of Ormond and in Valusia county aforesaid, a distance of one mile and seventy-six-hundredths
106 of a mile; and a branch from New Smyrna to Blue Springs in Volusia county, a distance of twenty-eight miles and six hundredths of a mile; and a branch from its main line at Rockledge in Brevard county to the Indian River, a distance of fifty-six-hundreths of a mile; and a branch from its main line at West Palm Beach in Dade County to the Atlantic Ocean, a distance of one mile and forty-one-hundredths of a mile, and a branch from its main line in the city of Miami in Dade County to Biscayne Bay, a distance of fifty-five-hundredths of a mile, being a total of four hundred and three miles and twenty-six-hundredths of a mile of main line and branches.

To have and to hold the premises property, rights, franchises and estates hereby conveyed or intended to be conveyed, with all and singular the reversions, remainders, tolls rents, issues, and profits, privileges or appurtenances now or hereafter be-

longing or in any wise appertaining thereto, unto the said party of the second part, and its successor or successors or assigns forever. In trust, nevertheless, for the persons, corporations, firms and partnerships, and for the benefit, security and protection of the persons and corporations, firms and partnerships, who shall hold the bonds and interest coupons aforesaid, or any or either of them, and for the enforcing the payment thereof, payable in accordance with the true intent and meaning of this Deed, and of said bonds, and of said coupons, and without preference of any of said bonds over any of the others thereof by reason of priority in the time of issue or negotiation thereof, or otherwise whatsoever.

Provided, however, that these presents are upon the express condition, that if the party of the first part, its successors or assigns, shall well and truly pay or cause to be paid unto the holders of said bonds to be issued as aforesaid, the principal and interest to become due thereon, at the times and in the manner stipulated in the said bonds and in said interest coupons, and shall well and truly keep, perform and observe
107 the covenants, promises and conditions in said bonds and in this indenture expressed as to be kept, performed and observed by the said party of the first part, then these presents and the estate hereby granted shall cease, determine and be void, otherwise to be and remain in full force and effect.

And provided further, that these presents shall not be held to convey, nor construed to constitute a lien upon the lands or any portion thereof granted or to be granted to the party of the first part by or under any act of the Legislature of the State of Florida, or received by it from the Florida Coast Line Canal and Transportation Company, or from the Boston and Florida Land Company, or any lots and lands held within the State of Florida for other than railroad purposes, and shall not be a lien upon any lands to be acquired, or hereafter acquired from the same source, unless the same is acquired for the operation of the railroad, except such part of said lands as may be actually used for the right of way of said Railway Company or for its business as a common carrier.

And provided, further, that these presents shall not constitute, nor be construed to constitute, a lien on any extension or extensions of the said railway south of its present terminus in the city of Miami, on the Miami river in Dade county, or any other branches or extensions that it may hereafter construct from its main line between Jacksonville and Miami, or upon any other properties, railroad line or lines that it may hereafter purchase or acquire.

It is hereby covenanted and agreed that the personal property and chattels hereby conveyed, or intended so to be, shall be real

estate for all the purposes of this instrument, and shall be held and taken to be fixtures and appurtenances of the said railway and as part thereof, and are to be used and sold therewith and not separated therefrom except as hereinafter provided.

It is hereby covenanted, declared and agreed by and between the parties thereto, and the party of the first part for
108 itself, its successors and assigns, doth hereby covenant and agree with the respective persons and corporations, firms and partnerships, who shall hold the bonds and interest coupons aforesaid, or any or either of them, that the trusts, uses, purposes, conditions and covenants for and upon which the rights, franchises and property, real and personal, hereinbefore described and conveyed to, and are to be held and disposed of by the party of the second part, are as follows, to-wit:

First: This Deed shall not operate, nor be held to prohibit the party of the first part, its successors or assigns, so long as it or they shall remain in possession of the said mortgaged premises, and there shall be no subsisting default in the payment of the principal or interest of the bonds hereby secured or of some of them, or in respect to something hereby required to be done, observed, kept or performed by the party of the first part from selling and surveying or otherwise disposing of for the use and benefit and the maintenance of said railway, free from the encumbrances and trusts hereof, any real or personal property now owned or hereafter acquired by said Company, which at any time can not be advantageously used in the proper and judicious operation, management or maintenance of said Railway and the business thereof. But in no case shall any sale or other disposition of such property be made without the express assent in writing of the party hereto of the second part, except that such consent shall not be necessary when the property sold is disposed of in the current maintenance and operation of the said railroad, and is replaced by other property of like kind and character.

Second: Until default shall be made in the payment of the principal or interest of the bonds hereby secured, or any of them, or in respect to something hereby required to be done, observed, kept or performed by the party of the first part, the
the party of the first part shall be suffered and permitted
109 to possess, manage, operate and enjoy the hereinbefore described railways, rights, franchises and other property, real and personal, with the equipment and appurtenances thereunto belonging, and to receive and use the tolls, income, rents, issues and profits thereof.

Third: the said party of the first part, its successors and assigns, shall and will at any time make, do, execute, acknowledge and deliver all such further acts, deeds and assurances in the law as may be reasonably advised, devised or required for effectuating the intentions of these presents, and for the better assuring and confirming unto the said Trustee, its successors in the trusts hereby created, upon the trusts and for the purposes herein expressed, all and singular the lands, railways and other property, equipment, appurtenances, rights and franchises hereby conveyed or intended so to be, whether now owned or possessed, or hereafter acquired by the party of the first part, its successors or assigns.

Fourth: The party of the first part shall and will from time to time pay and discharge all taxes, assessments, and governmental charges lawfully imposed upon said lands, lines of railway and branches and otherwise on said mortgaged premises, or upon any part thereof, the lien of which might or could be held to be prior to the lien hereof, so that the priority of this mortgage may be duly preserved: And the party of the first part shall not and will not suffer any matter or thing whatsoever whereby the lien hereof might or could be impaired, until the said bonds hereby secured, with all interest acquired thereon, shall be fully paid and satisfied.

Fifth: In case default shall be made in the payment of any of the interest hereby secured to be paid, and such default shall continue for six months after payment shall have been duly demanded, then and thereupon the entire principal sum
110 hereby secured to be paid shall, at the option of the said Trustee, become immediately due and payable, anything in said bonds to the contrary notwithstanding; and in that event if requested to do so by a majority in interest of the holders of the bonds hereby secured and then out-standing, by any instrument or concurrent instruments in writing, signed by them or by their attorneys in fact, duly authorized for that purpose, and proved as hereinafter provided, it shall be the duty of, and it is hereby made obligatory upon the said Trustee to elect and declare the said principal sum due as aforesaid, but nevertheless a majority in interest of said bondholders may, in case of such default, by an instrument or concurrent instruments in writing, signed by them or their attorneys in fact, and proved as aforesaid, instruct the said Trustees to declare the said principal sum due, or to refrain from making such declaration, upon such terms and conditions as such majority shall deem proper, or may annul or reverse this declaraton, if already made by the Trustee, anything herein contained to the contrary notwithstanding, but the action of the Trustee or of the bondholders, in case of any default, shall not affect or im-

pair the right of a majority in interest of such bondholders, at any time while such default continues, to declare or direct the Trustee to declare such principal sum due, nor shall it in any wise affect any subsequent default on the part of the party of the first part or impair any right resulting therefrom.

Sixth: In case default shall be made in the payment of any money, principal or interest, hereby secured to be paid, and such default shall continue for six months after payment shall have been duly demanded, the party of the first part, upon demand of the said Trustee, shall forthwith surrender to said Trustee the actual possession of, and it shall be lawful
111 for the said Trustee forthwith to enter into and upon, and take possession of, personally or by its agents or attorneys, all and singular the railway property and equipment thereof, and the appurtenances thereto and all the mortgaged premises hereby conveyed or intended so to be, together with all the records, books, papers and accounts of said party of the first part, and to have, hold and use, operate and manage the same, and from time to time make all needful repairs and such alterations therein, and additions and improvements thereto as it shall seem wise, and as the net income coming to its hands shall be adequate to pay for, and to receive the tolls, issues, incomes and profits, to pay all the proper costs, charges and expenses of so taking, holding and managing the same, including a reasonable compensation to said Trustee, its agents, attorneys and counsel, and all taxes and assessments prior to the lien of these presents, and all expenses of such repairs, alterations, additions and improvements and to apply the remainder of the moneys so received by it as follows:

In case the principal moneys secured by such bonds shall not have become due, to the payment of the coupons remaining in default in the order of their maturity. In case the paid principal moneys shall have become due, to the payment of the over-due coupons in the order of their maturity, and then to the payment of the principal upon such bonds pro rata, without any preference or priority whatever.

Seventh: In case default shall be made in the payment of any money, principal or interest, hereby secured to be paid, and such default shall continue for six months after payment shall have been duly demanded, it shall be lawful for the said Trustee, with or without entry, to sell all the railways, premises, estate, property, rights and franchises hereby conveyed, at public auction, at some suitable and usual place in the City of St. Augustine, Florida, having first given such notice of such sale as is required by law, and also notice by publication
112 in at least one newspaper published in the city of New York and one published in the city of St. Augustine, at

least once a week for two months next preceding such sale; and from time to time to adjourn such sale or sales, in its discretion and upon such sale or sales, to make and deliver to the purchaser or purchasers of the premises, estate, property, rights and franchises so sold a good and sufficient deed or deeds for the same, which sale or sales shall be a perpetual bar, both in law and in equity, against the party hereto of the first part and all persons and corporations lawfully claiming, or to claim by it, through or under it; and upon the making of any such sale, the principal of all the bonds which may have been issued and shall then be outstanding hereunder shall forthwith become due and payable, anything in said bonds to the contrary notwithstanding, and upon the making of any such sale the said Trustee shall apply the proceeds of such sale as follows, to-wit:

First: To the payment of the costs and expenses of such sale or sales, including a reasonable compensation to such Trustee, its agents, attorneys and counsel, and all expenses, liabilities and advances made and incurred by said Trustee in the administration of the Trusts hereby conveyed or intended to be, and all taxes and assessments prior to the lien of these presents.

Second: To the payment of the whole amount of principal and interest, which shall then be owing or unpaid upon the said bonds, or any of them, whether the said principal, by the tenor of these bonds, be they due or yet to become due, and in case of a deficiency of such proceeds to pay in full the whole amount of principal and interest owing or unpaid upon the said bonds, they shall be paid ratably in proportion to the amounts owing and unpaid upon them, respectively, and without discrimination as between principal and interest, and without preference of any one bond or interest coupon over any of the others.

Third: To pay over the surplus, if any, to whomsoever may be lawfully entitled to receive the same by judgment of
113 some court of competent jurisdiction.

The receipt of the Trustee or Trustees who shall make the sale hereinbefore authorized shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money, and such purchaser or purchasers, his or their heirs, or assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of such Trustee or Trustees therefor, be obliged to see to the application of such purchase money upon or for the trusts or purposes of these presents, or be in any wise answerable for any loss misapplication or non-application of such purchase money by the Trustee or Trustees.

The foregoing provision for enforcing the security intended to be given by this Indenture are cumulative to the ordinary remedy by foreclosure in the courts, and the trusts hereunder upon default being made as aforesaid, may, and upon being requested by the bondholders here under, as herein provided, shall take appropriate proceedings in the courts to enforce the security hereby intended to be given.

Eighth: It shall be the duty of, and it is hereby made obligatory upon the said Trustee, upon proper indemnification as hereinafter provided, to execute the power of entry and sale hereby granted, or both, or to take appropriate proceedings at law or in equity to enforce the rights of the Trustee and of the bondholders under these presents upon requisition in writing as hereinafter provided, to-wit:

1st. If default be made in the payment of the money hereby secured, principal or interest, or any part thereof, as aforesaid, or in the payment of taxes, assessments, or other governmental charges lawfully levied or assessed upon the lands, railways, or other property hereby conveyed, such requisition shall be by an instrument or covenant instruments in writing, signed by such bondholders or by their attorneys in fact, duly authorized for that purpose, and proved as hereinafter provided, and upon such requisition the said Trustee shall proceed forthwith
114 to enforce the rights of the said Trustee and of the bondholders under these presents, by sale or entry or both, according to such requisition, or by judicial proceedings for such purpose or purposes as the said bondholder shall direct; or failing, such direction as it being advised by counsel learned in the law shall deem most expedient in the interest of the bondholders secured thereby.

2nd. If such default be in respect of any other covenant or condition in said bonds or herein contained, to be kept and performed by the said party of the first part, then such requisition must be by not less than a majority in interest of the holders of the bonds secured hereby and then outstanding, and must be by an instrument in writing, signed by such bondholders or their attorneys in fact, and proved as herein provided.

Ninth: In case of any default on its part as aforesaid, the party of the first part shall not and will not set up, claim, or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now existing, or which may hereafter be passed in the State of Florida, in order to prevent or hinder the enforcement of foreclosure of this mortgage, or the absolute sale of the premises, estate, property, rights and franchises hereby conveyed, or the final and absolute putting into possession thereof, immediately upon such sale, of the pur-

chasers thereat, but hereby waives the benefit of all such laws.

Tenth: Upon the filing of a bill of equity or other commencement of judicial proceedings to enforce the rights of the Trustee and of the bondholders under these presents, the said Trustee shall be entitled to the appointment by any court of competent jurisdiction, of a receiver or receivers of the lands, railway and other property hereby mortgaged, and of the earnings, incomes, rents, issues and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

115 Eleventh: The party hereto of the first part, for itself and all corporations hereinafter through or under it, or who may at any time hereafter become holders of liens junior to that to have the estate comprised in the security intended to be created by these presents marshalled upon any foreclosure or other enforcement thereof. And the Trustee herein and any court in which foreclosure of this mortgage or administration of the trusts hereby created is sought, shall have the right to sell the entire property of every description comprised in or subject to the trusts hereby created by this Indenture, as a whole in one single lot, if it shall in its discretion think fit, and a majority in interest of said bondholders may by an instrument or concurrent instruments in writing, proved as herein provided, direct to the Trustee or petition the said court to sell the property in such manner.

Twelfth: In case of any foreclosure sale, or any sale under the provisions hereof the purchaser or purchasers at such sale shall be entitled, in making settlement for, or payment of, the purchase money bidden, to turn toward the payment of such purchase money any of the bonds secured hereby, held by such purchaser or purchasers, counting such bonds for that purpose at the sum which shall be payable out of the net proceeds of such sale to the holder or holders of such bonds as his or their just share of such net proceeds, after allowing for the proportion of payment which may be required in cash for the costs and expenses of the sale; and if such share of net proceeds shall be less than the amount then due upon such bonds, to make such settlement by receipting upon such bond the amount to be credited thereupon.

Thirteenth: Whenever the party of the first part shall have deposited with the said Trustee a sum not less than Fifty thousand dollars, it shall be the duty of the said Trustee, upon request of the party of the first part, to redeem said bonds in the manner hereinafter provided, viz:

116 The Trustee shall purchase therewith so many of the said bonds as the sum on hand will suffice for, at the market price, not exceeding, however, their par value and ac-

crued interest. If, however, the Trustee can purchase no bonds at or within the limit thus fixed, the Trustee shall select by lot for redemption so many of said bonds as such money will suffice to pay for in the coin in which such bonds are payable, and shall forthwith give notice of such selection, and call in the bonds so selected by advertisement in one or more newspapers of general circulation published in the city of New York once in each week, for at least six consecutive weeks, and until the day for the next payment of semi-annual interest on said bonds, and on and after that day on surrender to the Trustee of any bond so called in, with all unpaid coupons for interest thereto belonging, the Trustee shall, out of the said moneys, redeem the same at the rate aforesaid.

Interest on each bond so called, and which shall not be delivered for redemption as aforesaid, shall cause on the day designated therefor in the advertisement, which shall be a day when the semi-annual interest thereon becomes due, and the coupons representing interest accruing after that day shall be void and the company shall not be liable for such interest.

All bonds so purchased or redeemed by the Trustee, together with the coupons thereto belonging, as soon as received by the said Trustee shall be effectually cancelled, and shall be surrendered to the company.

Fourteenth: The said Trustee may, and upon request of the party of the first part, shall, cancel and discharge the lien of these presents, and execute and deliver to the party of the first part such deeds as shall be requisite to satisfy the lien hereof, and re-convey to the party of the first part the estate and title hereby conveyed or intended to be whenever all the bonds and coupons secured hereby which shall have been duly
117 issued, shall be paid and cancelled or destroyed.

Fifteenth: Meetings of the holders of the bonds hereby secured for the determination of, or action upon, any of the questions upon which, by any of the provisions hereof, the holders of the said bonds may have the right to decide, may be called after first giving notice of the time and place of such meeting by advertisement in one paper published in the city of New York once aweek for four weeks next preceding such meeting to be held in the city of New York, or other suitable place, by the then Trustee or by a majority in interest of the said bondholders, or in such other manner as may from time to time be fixed by a majority in interest of said bondholders. All acts or resolutions of the said bondholders affecting any of the rights or remedies, or for the benefit of the said bondholders, or the duty of the Trustee, or in pursuance of the Trust hereby created, shall be authenticated by an instrument or instruments in writing, signed by all persons assenting thereto

or their attorneys in fact, and also by a record of the proceedings of any such meeting. Any instrument in writing required by the provisions of this Indenture to be executed by the holders of the bonds hereby secured, may be in any number of parts. The execution thereof shall be deemed sufficiently proved if each signature thereto and the serial number of the bonds which each person signing the same shall claim to hold, shall be duly certified by a Notary Public or other officer authorized to take acknowledgment of deeds, under his official seal. The execution of such power of attorney under which any person shall claim to act for another in signing any such instrument shall be certified to by a Notary Public or other officer authorized to take acknowledgment of deeds under his official seal.

Sixteenth: No act or resolution of any meeting of bondholders, or of the Trustee, nor any act or election of, or instrument executed by a majority in interest of all such bondholders, shall impair, control or affect the rights, interests or remedies, legal or equitable, of any non-assenting bondhold-
118 ers, except in the particulars and to the extent to which the same is made expressly controlling by the provisions contained in this Indenture.

Seventeenth: It is hereby declared to be a condition upon which the said party of the second part, and its successor or successors in the trust hereby created, have assented to those presents and accepted the trusts hereby created, that the said Trustee shall not in any manner be held responsible for persons employed by it, when selected with reasonable care, nor shall the said trustee be answerable, except for its own willful default, but the foregoing exceptions shall not apply to the liability of the Trustee in regard to any sum of money deposited with it; and in all cases, the said trustee, the party of the second part, shall be authorized to pay such reasonable compensation as it shall deem proper to the counsel, attorneys, officers, agents, servants and employes whom it may reasonably employ in the administration or management of this trust; and the said Trustee and its successor or successors shall have and be entitled to, just compensation for all services which it or they may render in connection with the administration or management of the trusts hereby created, to be paid by the said party of the first part out of the trust estate.

The party of the second part shall not be under any obligation to take any action toward the execution of this trust which, in its opinion, will be likely to involve it in personal expense or liability, unless one or more of bondholders shall, as often as required by said Trustee, give it reasonable indemnity

against the same, anything herein to the contrary notwithstanding. The said Trustee may resign and discharge itself of the trust hereby created by notice in writing to the party of the first part, to be given at least three months before such resignation shall take effect, or such shorter time as the party of the first part shall accept as adequate.

And whenever a vacancy shall occur in the office of
119 Trustee hereunder, by resignation or otherwise, the Board of Directors of the party of the first part, or its successors or assigns, shall have the right to appoint a successor or successors to fill such vacancy, which appointment shall be attested by the certificate in writing of the President and Secretary of the party of the first part, under its corporate seal duly acknowledged, and to be recorded in the office or offices of the clerk of the Circuit court in such of the counties through which said road runs in the State of Florida.

Notice of such appointment shall be given by publication in at least two newspapers published in the city of New York at least once a week for a month thereafter; and the successor or successors appointed as aforesaid, shall continue to be the Trustee or Trustees hereunder until a majority in interest of the holders of the bonds hereby secured then outstanding shall, by an instrument or concurrent instruments in writing executed under their hands and seals, or the hands and seals of their attorneys in fact, duly authorized for that purpose, duly acknowledged, and filed in the office or offices of the clerk of the Circuit court in each county through which the road runs in the State of Florida, appoint a new Trustee or Trustees, to act hereunder, in which case upon the filing of such instrument or instruments, the Trustee or Trustees thereby appointed shall, without further act, deed or conveyance, become the Trustee or Trustees hereunder.

And if said Board of Directors shall for thirty days, neglect or refuse to fill any such vacancy, the same may forthwith be filled by a majority in interest of the holders of bonds secured then outstanding, by filing, as aforesaid, the instrument or instruments of appointment hereinbefore specified.

An appointment made in the manner hereinbefore prescribed
by or in behalf of a majority in interest of the holders of
120 the bonds hereby secured then outstanding shall supersede any appointment to fill a vacancy theretofore made in any other manner whatsoever; and any Trustee or Trustees appointed to fill any such vacancy, or to succeed any Trustee or Trustees hereunder, shall be vested with and entitled to all the rights, title, interest and estate, powers, duties and trusts herein conveyed and contained as if originally named in this mortgage.

Eighteenth: The term or words "Trustee" or "Trustees," as used in these presents shall be held and construed to mean the Trustee, party of the second part, or its successor or successors for the time being, and said successor or successors shall have and be possessed of, and shall be competent to exercise all the estate, rights, property and powers hereby granted to or conferred upon the party of the second part.

In witness whereof, the party hereto of the first part has caused its corporate seal to be hereunto affixed and attested by its Secretary, and these presents to be signed by its President in pursuance of a resolution of its Board of Directors, and the party of the second part, in token of its acceptance of the trusts hereby created, has caused its corporate seal to be hereunto affixed and attested by its Secretary; and these presents to be signed by its President, the day and year first above written.

FLORIDA EAST COAST RAILWAY COMPANY.

[Seal] By H. M. FLAGLER, *President.*

Attest: J. C. SALTER, *Secretary.*

Signed, sealed and delivered in presence of—

C. D. BOICE.

L. C. HAINES.

121 COLONIAL TRUST COMPANY, TRUSTEE.

By CHAS. C. DICKINSON, *President.*

Attest: J. W. TAPPIN, *Secretary.*

Signed, sealed and delivered in presence of—

CHARLES A. COLLIN.

HENRY P. KEITH.

CITY AND COUNTY OF NEW YORK } *ss.*
STATE OF NEW YORK }

Be it remembered, that on this seventeenth day of September, A. D. 1897, before me, Charles Taylor, a Commissioner of Deeds of the State of Florida in and for the State of New York, residing in said City of New York, personally appeared H. M. Flagler, the President of the Florida East Coast Railway Company, and J. C. Salter, the Secretary of the said Company, to me, respectively, personally known to be such, who, being by me severally duly sworn, did depose and say that he, the said H. M. Flagler, resides in New York City, New York, and that he, the said J. C. Salter, also resides in said New York City, and that he, the said H. M. Flagler, was and is the President, and he, the said J. C. Salter, was and is the Secretary of the

said Company, that they know the corporate seal of the said Company, that the said seal affixed to the foregoing instrument is such corporate seal, that it was so fixed thereto by order of the Board of Directors of said Company, and that they, the said H. M. Flagler and J. C. Salter, signed their names thereto by the like order as such President and Secretary of said Company, respectively.

And the said H. M. Flagler and J. C. Salter and such President and Secretary above mentioned, further acknowledged to me that they had executed the said instrument to be their free and voluntary act and deed, and to be the free and voluntary act and deed of said Company for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal the sixteenth day of September, A. D. 1897.

CHARLES TAYLOR,
Commissioner for Florida,
New York City, New York.

[Seal]

STATE OF NEW YORK }
CITY AND COUNTY OF NEW YORK } *ss.*

Be it remembered, that on this fourteenth day of September, A. D. 1897, before me, Joseph B. Braman, a Commissioner of Deeds of the State of Florida in New York, residing in the City of New York, personally appeared Charles C. Dickinson, Vice President, and James W. Tappin, Secretary of the Colonial Trust Company, to me personally known to be the persons described in and who executed the foregoing instrument, and severally acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned, and the free act and deed of said Company. And, being duly sworn, they did depose and say that they were and are the above-described officers of said Company, that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is such corporate seal, that it was affixed thereto by order of the Board of Trustees of said Company, and that they signed their names thereto by the like order as the President and Secretary or said Company, respectively.

In witness whereof, I have hereunto set my hand and affixed my official seal this fourteenth day of September, A. D. 1897.

JOSEPH B. BRAMAN,
Commissioner of Deeds for the State of Florida in and for the State of New York.
[Seal] Offices: Equitable Bldg., 120 Broadway, N. Y. City.
Branch and Residence, 1274.

123

EXHIBIT "3"

FLORIDA EAST COAST RAILWAY COMPANY TO COLONIAL TRUST COMPANY.

TRUST DEED OR MORTGAGE.

This Indenture, made this 1st day of October, One Thousand Nine Hundred and Two, between the Florida East Coast Railway Company, a corporation existing under and by virtue of the laws of the State of Florida, party of the first part, and the Colonial Trust Company, a corporation existing under and by virtue of the laws of the State of New York, party of the second part, witnesseth:

Whereas, the party hereto of the first part is a corporation authorized to own, construct, extend, maintain, and operate a line of railroad from the northerly or westerly bank of the St. Johns River at or near the City of Jacksonville, Duval County, to a point at or near the City of Key West in Monroe County, passing through the Counties of Duval St. Johns, Putnam, Volusia, Brevard, Dade and Monroe, with branches, all within the State of Florida; and,

Whereas, Under and in compliance with the laws of the State of Florida, it has constructed and extended and now owns, maintains and operates the said line of railroad from a point at or near its terminus in Jacksonville, in said Duval County, to and across the St. Johns River to a point within the corporate limits of the city of Miami on Biscayne Bay in Dade

124 County, with branches, all within the State of Florida, as more particularly hereinafter named; and,

Whereas, The said party of the first part is authorized by law to borrow such sums of money at such rates of interest and upon such terms as the party of the first part or its Board of Directors shall authorize or agree upon and may deem necessary or expedient and to execute one or more trust deeds or mortgages therefor; and,

Whereas, The said party of the first part has issued and there are now outstanding and unpaid seven thousand two hundred and fifty-nine bonds of said party of the first part in the sum of one thousand dollars each, amounting in the aggregate to seven million two hundred and fifty-nine thousand dol-

lars, dated the first day of September, A. D. 1897, bearing interest as therein provided, and secured by the trust deed or mortgage dated the first day of September, A. D. 1897, to the Colonial Trust Company, a corporation existing under and by virtue of the laws of the State of New York, executed by the said party of the first part upon the railroad and property of said party of the first part, as described in the said trust deed or mortgage, and which said trust deed or mortgage is recorded in the office of the Clerk of the Circuit Court in and for the Counties of Duval, St. Johns, Putnam, Volusia, Brevard, and Dade, respectively; and,

Whereas, the Board of Directors of said party of the first part has authorized and agreed upon, and deem necessary and expedient that the said party of the first part borrow such sums of money as may be required for the purposes of extension, building branch lines, consolidating with or leasing or purchasing other railroads or railroad properties as allowed by law, and for the purpose of improving, equipping, providing betterments for, constructing, operating, and maintaining the
125 same and its present railroad and property, and for paying moneys advanced therefor, and for paying moneys now owing by said party of the first part, and for its other lawful purposes, and to issue its bonds therefor to an amount not exceeding the sum of eight million seven hundred and forty-one thousand dollars, and to execute a trust deed or mortgage upon its entire railroad and branches, equipment and other property used for railroad purposes, as security for the payment of such bonds, said bonds to be payable in gold coin of the United States of the present standard of weight and fineness, on the .... day of ....., A. D. 1932, and bearing interest at the rate of five per cent per annum, payable semi-annually, in like coin, on the .... day of ..... and ..... of each year until the principal sum shall be paid, each of said bonds to be for one thousand dollars, and to bear date the.... day of ..... A. D. 1902, to be payable, both principal and interest, at the financial agency of said party of the first part in New York City, to be sealed with the corporate seal of said party of the first part, attested by its Secretary, and to be signed in the corporate name of said party of the first part by its President, and each bond to have interest coupons annexed with the signature of the Treasurer of said party of the first part engraved thereon, and to be duly certified by the Trustee of the trust deed or mortgage, the execution of which trust deed or mortgage, for the purpose of securing equally all of said bonds and coupons, has in like manner been agreed upon and authorized, said bonds, coupons and certificates to be substantially in the following form, to-wit:

126 $1,000 $1,000

UNITED STATES OF AMERICA

STATE OF FLORIDA

FLORIDA EAST COAST RAILWAY COMPANY

FIVE PER CENT THIRTY-YEAR GOLD BOND

Due ..... A. D. 1932.

No. .....

The Florida East Coast Railway Company, for value received, hereby promises to pay to bearer (unless this bond be registered, and if this bond be registered, to the registered holder thereof) the sum of One Thousand Dollars in Gold Coin of the United States of America of the present standard weight and fineness, at its financial agency in the City of New York, on the ..... day of ..... in the year A. D. 1932; and to pay interest thereon at the rate of five per cent per annum, in like coin, semi-annually, on the first day of ..... and the first day of ..... of each year until said principal sum shall be paid, upon presentation and surrender at said agency of the annexed interest coupons as they shall severally become due.

This bond is one of a series of bonds of like tenor and amount, numbered consecutively from One to Eight Thousand Seven Hundred and Forty-one, both inclusive, the payment of all of which bonds is equally secured by a trust deed or mortgage of even date herewith, made by said Railway Company, conveying to the Colonial Trust Company, Trustee, all the franchises, railroad, bridges, equipment and other property of the said

127 Railway Company, as described in said trust deed or mortgage, upon the terms and conditions therein set forth.

If default be made in the payment of any semi-annual installment of interest on any of the said bonds, the principal of this bond may be made due and payable as provided in said Trust deed or Mortgage. This bond is subject to redemption before maturity, upor payment in like coin as aforesaid of the sum of One Thousand Dollars and accrued interest hereon, as provided in said Trust Deed or Mortgage.

This bond shall pass by delivery unless registered. After registration of ownership, certified hereon by the Railway Company's transfer agent, no further transfer hereof, unless made on the Railway Company's books, shall be valid unless the last transfer shadd have been made to bearer, in which case this bond shall again become transferable by delivery until again registered in the name of the owner.

Registration of this bond shall not restrain the negotiability of the interest coupons by delivery merely.

This bond shall not be valid until the certificate authenticating the same, and endorsed hereon, shall have been signed by the Trustee under said Trust Deed or Mortgage.

In witness whereof, the said Railway Company has caused its corporate seal to be hereunto affixed, attested by Secretary, and these presents to be signed by its President, the ..... day of ..... A. D. 1902, and the annexed interest coupons to be executed with the engraved signature of its Treasurer.

FLORIDA EAST COAST RAILWAY COMPANY.
By H. M. FLAGLER, *President.*

Attest:

Secretary.

128 COUPON.

No. $25.00

The Florida East Coast Railway Company will pay, at its financial agency, in the City of New York, on the .... day of ..... A. D. 19.., to the bearer, upon presentation and surrender of this coupon, Twenty-five Dollars in Gold Coin of the United States of America, being six months' interest due that day upon its bond n umber ..... for $1,000.

Treasurer.

TRUSTEE'S CERTIFICATE.

It is hereby certified that this bond is one of the series of bonds issued under the Trust Deed or Mortgage bearing date the first day of October, A. D. 1902, and referred to therein.

COLONIAL TRUST COMPANY, TRUSTEE.
By

President.

Now, therefore, this Indenture Witnesseth, That the said Florida East Coast Railway Company, party of the first part, in consideration of the premises and the sum of One Dollar to it duly paid by the said party of the second part at or before the ensealing or delivery of these presents, the receipt whereof

is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid, hath
129 granted, bargained, sold, aliened, remised, released, conveyed and confirmed, assigned, transferred and set over and by these presents doth bargain, sell, alien, remise, release, convey and confirm, assign, transfer and set over unto the said party hereto of the second part, and its successors or assigns forever, all and singular the entire railway of the said party of the first part as hereinafter described, viz:

From the City of Jacksonville in Duval County in the State of Florida, to the city or town of Miami in Dade County, in said State, as the same is now located and constructed through the Counties of Duval, St. Johns, Putnam, Volusia, Brevard and Dade; also all and singular the tenements, rights of way, ties, rails, bridges, structures, fixtures, turn-tables, tracks, "Y's," rights of trackage rights general and special and contracts for trackage now owned or which may hereafter be owned or acquired by the said party of the first part; also all the lands, tenements, hereditaments acquired or appropriated, or which may hereafter be acquired or appropriated, for the purposes of the said railway, and all easements thereunto belonging or in any wise appertaining; and all railways, ways, rights of way, stations, station buildings, station grounds, stores, storehouses, section houses, tool houses, tracks, sidings, turnouts, bridges, viaducts, culverts, fences, and other structures, water tanks and other fixtures; car houses, freight houses, wood houses, warehouses, machine shops, paint shops, repair shops, store buildings, store structures, buildings, erections and fixtures of every kind and nature whatsoever; leaseholds, leases, rights under leases, or under contracts or covenants or agreements, terms or parts of terms now held or hereafter to be acquired for the use of said railway or in connection therewith, or in the business thereof; and also all locomotives, engines,
130 fixtures, cars and other rolling stock and equipment now held or hereafter to be acquired; and all machinery, stationary engines, pile drivers, hand cars, tool cars, tools, implements, fuel and material whatsoever now held or hereafter to be acquired; and all other property, real, personal or mixed, now held or which may hereafter be acquired for or in connection with the construction, operation, maintenance, repairing or replacement of the said railway or any part thereof, or as convenient or necessary for the uses or purposes thereof; and all rights, powers, privileges and franchises, tolls, rents, issues and profits connected with or relating to the said railway, or to the uses and purposes thereof; and also all corporate franchises of every name and nature relating to said railway, in-

cluding the franchise to operate the same, together with all the improvements or additions made or to be made to any or all of said property, estates, railroad or railroads, and their appurtenances, by the said party of the first part; and also all and every other estate, right, title, interest, property, or thing hereafter acquire or hold, necessary or convenient for the use, occupation and enjoyment of all or any of the said railways, leases and property, rights, provileges and franchises, or any part or portion thereof of the main line of said railway extending from a point in the City of Jacksonville, Duval County, to a point on the Miami River, at Miami, in Dade County, a distance of three hundred and sixty-six miles and eight-hundredths of a mile; with branches from East Palatka to Palatka, a distance of one mile and eighty-hundredths of a mile; and a branch from its main line, near East Palatka, to San Mateo, a distance of three miles and four-hundredths of a mile;
131 and a branch from its main line at Ormond across the Halifax river to a point on the Atlantic Ocean, all in the town of Ormond and in Volusia County aforesaid, a distance of one mile and seventy-six-hundredths of a mile; and a branch from New Smyrna to Blue Springs, in Volusia County, a distance of twenty-eight miles and six-hundredths of a mile; and a branch from its main line at Rockledge, in Brevard County, to the Indian River, a distance of fifty-six-hundredths of a mile; and a branch from its main line at West Palm Beach, in Dade County, to the Atlantic Ocean, a distance of one mile and forty-one-hundredths of a mile; and a branch from its main line, in the City of Miami, in Dade County, to Biscayne Bay, a distance of fifty-five-hundredths of a mile; being a total of four hundred and three miles and twenty-six-hundredths of a mile of main line and branches. And also with that certain branch line of railroad from the main line of said party of the first part, at South Jacksonville to Mayport, in Duval County, Florida, a distance of about twenty-five miles; and also with that certain branch line of railroad from the main line of said party of the first part at Titusville, in Brevard County, Florida, to Enterprise, in Volusia County, Florida, a distance of about thirty-six miles; together with any and all property, real, personal or mixed, rights, privileges and franchises now held or hereafter acquired by the party of the first part in connection with said branch lines, or either of them, or for the uses and purposes thereof.

To have and to hold the premises, property, rights, franchises and estates hereby conveyed or intended to be conveyed, with all and singular the reversions, remainders, tolls, rents, issues and profits, provileges or appurtenances now or hereafter be-

longing, or in any wise appertaining thereto, unto the said party of the second part and its successor or successors
132 or assigns forever. In trust, nevertheless, for the persons, corporations, firms and partnerships, and for the benefit, security and protection of the persons and corporations, firms and partnerships, who shall hold the bonds and interest coupons aforesaid, or any or either of them, and for the enforcing the payment thereof, payable in accordance with the true intent and meaning of this Trust Deed or Mortgage, and of said bonds, and of said coupons, and without preference of any of said bonds over any of the others thereof, by reason of priority in the time of issue or negotiation thereof, or otherwise howsoever.

Provided, however, and these presents are upon the express condition, that if the party of the first part, its successors or assigns, shall well and truly pay or cause to be paid unto the holders of said bonds to be issued as aforesaid, the principal and interest to become due thereon, at the time and in the manner stipulated in the said bonds and in said interest coupons, and shall well and truly keep, perform and observe the covenants, promises and conditions in said bonds and in this Indenture expressed as to be kept, performed and observed by the said party of the first part, then these presents and the estate hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

And provided further, that these presents shall not be held to convey nor construed to constitute a lien upon the lands or any portion thereof granted or to be granted to the party of the first part by or under any Act of the Legislature of the State of Florida, or received by it from the Florida Coast Line Canal and Transportation Company, or from the Boston and Florida Land Company, or any lots or lands held within the State of Florida for other than railroad purposes, and shall not be a lien upon any lands to be acquired, or hereafter ac-
133 quired from the same source, unless the same is acquired for the operation of the railroad, except such part of said lands as may be actually used for the right of way of said Railway Company or for its business as a common carrier.

And, provided further, that these presents shall not constitute nor be construed to constitute, a lien on any extension or extensions of the sail Railway south of its present terminus in the City of Miami, on the Miami River, in Dade County, or any other branches or extensions that it may hereafter construct from its main line between Jacksonville and Miami, or upon any other properties railroad line or lines that it may hereafter purchase or acquire.

It is hereby covenanted and agreed that the personal property and chattels hereby conveyed, or intended so to be, shall be real estate for all the purposes of this instrument, and shall held and taken to be fixtures and appurtenances of the said railway and as part thereof, and are to be used and sold therewith, and not separated therefrom except as hereinafter provided.

It is hereby covenanted, declared and agreed by and between the parties hereto, and the party of the first part for itself, its successors and assigns, doth hereby covenant and agree with the respective persons, corporations, firms and partnerships, who shall hold the bonds and interest coupons aforesaid, or any or either of them, that the trusts, uses, purposes, conditions and covenants for and upon which the rights, franchises and property, real and personal hereinbefore described are conveyed to, and are to be held and disposed of by the party hereto of the second part, are as follows, to-wit:

134 First. This Trust Deed or Mortgage shall not operate, nor be held to prohibit the party of the first part, its successors and assigns, so long as it or they shall remain in possession of the said mortgaged premises, and there shall be no subsisting defaults in the payment of the principal or interest of the bonds hereby secured or of some of them, or in respect to something hereby required to be done, observed, kept, or performed by the party of the first part from selling and conveying or otherwise disposing of for the use and benefit and the maintenance of said Railway, free from the encumbrances and trusts hereof, any real or personal property now owned or hereafter acquired by said Company, which at any time cannot be advantageously used in the proper and judicious operation, management or maintenance of said railway and the business thereof. But in no case shall any sale or other disposition of property be made without the express assent in writing of the party hereto of the second part; except that such consent shall not be necessary when the property sold is disposed of in the current maintenance and operation of the said railroad, and is replaced by other property of like kind and character.

Second: Until such default shall be made in the payment of the principal or interest of the bonds hereby secured, or any of them, or in respect to something hereby required to be done, observed, kept or performed by the party of the first part, the party of the first part shall be suffered and permitted to possess, manage, operate and enjoy the hereinbefore described railways, rights, franchises and other property, real and personal, with the equipment and appurtenances thereunto belonging,

and to receive and use the tolls, income, rents, issues and profits thereof.

135 Third: The said party of the first part, its successors and assigns, shall and will at any time make, do, execute, acknowledge and deliver all such further acts, deeds and assurances in the law as may be reasonably advised, devised or required for effectuating the intention of these presents, and for the better assuring and confirming unto the said Trustee, and its successors in the trusts hereby created, upon the trusts and for the purposes herein expressed, all and singular the lands, railways and other property, equipment, apurtenances, rights and franchises hereby conveyed or intended so to be, whether now owned or possessed, or hereafter acquired by the party of the first part, its successors or assigns.

Fourth: The party of the first part shall and will from time to time pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the said lands, lines of railway and branches and otheriwse on said mortgaged premises, or upon any part thereof, the lien of which might or could be held to be prior to the lien hereof, so that the priority of this Trust Deed or Mortgage may be duly preserved; and the party of the first part shall not and will not suffer any matter or thing whatsoever whereby the lien hereof might or could be impaired, until the said bonds hereby secured, with all interest accrued thereon, shall be fully paid and satisfied; excepting the said mortgage of the said party of the first part to the Colonial Trust Company, bearing date the first day of September, A. D. 1897.

Fifth: In case default shall be made in the payment of any of the interest hereby secured to be paid, and such default shall continue for six months after payment shall have been duly demanded, then and thereupon the entire principal sum hereby secured to be paid shall at the option of the said

136 Trustee, become immediately due and payable, anything in said bonds to the contrary notwithstanding; and in that event, if requested to do so by a majority in interest of the holders of the bonds hereby secured and then outstanding, by an instrument or concurrent instruments in writing, signed by them or by their attorneys in fact, duly authorized for that purpose, and proved as hereinafter provided it shall be the luty of, and it is hereby made obligatory upon the said Trustee to elect to declare the said principal sum due as aforesaid; but nevertheless a majority in interest of said bondholders may, in case if such default, by an instrument or concurrent instruments in writing, signed by them or their attorneys in fact, and proved as aforesaid, instruct the said Trustee to declare

the said principal sum due, or to refrain from making such declaration, upon such terms and conditions as such majority shall deem proper, or may annul or reverse the declaration, if already made by the Trustee, anything herein contained to the contrary notwithstanding; but the action of the Trustee or of the bondholders, in case of any default, shall not affect or impair the right of a majority in interest of such bondholders, at any time while such default continues, to declare, or direct the Trustees to declare, such principal due, nor shall it in any wise affect any subsequent default on the part of the party of the first part or impair any right resulting therefrom.

Sixth: In case default shall be made in the payment of any money, principal or interest, hereby secured to be paid, and such default shall continue for six months after payment shall have been duly demanded, the party of the first part, upon demand of the said Trustee, shall forthwith surrender to said Trustee, the actual possession of, and it shall be lawful for the said Trustee forthwith to enter into and upon, and take
137 possession of, personally or by its agents or attorneys, all and singular the railway property and equipment thereof, and the appurtenances thereto, and all the mortgaged premises hereby conveyed or intended so to be, together with all the records, books, papers and accounts of said party of the first part, and to have, hold and use, operate and manage the same and from time to time make all needful repairs and such alterations therein, and additions and improvements thereto, as to it shall seem wise, and as the net income coming into its hands shall be adequate, to pay for, and to receive the tolls, rents incomes, issues and profits thereof, and out of the said rents, tolls, issues, incomes and profits to pay all the proper costs, charges, and expenses of so taking holding and managing the same, including a reasonable compensation to said Trustee, its agents, attorneys and counsel, and all taxes and assessments prior to the lien of these presents and all expenses of such repairs, alterations, additions and improvements, and to apply the remainder of the moneys so received by it as follows:

In case the principal moneys secured by such bonds shall not have become due, to the payment of the coupons remaining in default in the order of their maturity. In case the said principal moneys shall have become due, to the payment of the over-due coupons in the order of their maturity and then to the payment of the principal upon such bonds pro rata, without any preference or priority whatever.

Seventh: In case default shall be made in the payment of any money, principal and interest, hereby secured to be paid and such default shall continue for six months after payment shall

have been duly demanded, it shall be lawful for the said
138 Trustee, with or without entry, to sell all the railways, premises, estate, property, rights and franchises hereby conveyed at public auction, at some suitable and usual place in the City of St. Augustine, Florida, having first given such notice of such sale as is required by law, and also notice by publication in at least one newspaper published in the City of New York and one published in the City of St. Augustine, at least once a week for two months next preceding such sale; and from time to time to adjourn such sale or sales, in its discretion, and upon such sale or sales, to make and deliver to the purchaser or purchasers of the premises, estate, property, rights and franchises so sold a good and sufficient deed or deeds for the same, which sale or sales shall be a perpetual bar, both in law and in equity, against the party hereto of the first part and all persons and corporations lawfully claiming, or to claim by, through or under it; and upon the making of any such sale, the principal of all the bonds which may have been issued and shall then be outstanding hereunder shall forthwith become due and payable, anything in said bonds to the contrary notwithstanding; and upon the making of any such sale, the said Trustee shall apply the proceeds of such sale as follows, to-wit:

First: To the payment of the costs and expenses of such sale or sales, including a reasonable compensation to such Trustee, its agents, attorneys and counsel, and all expenses, liabilities, and advances made and incurred by said Trustee in the administration of the trusts hereby created and in operating and maintaining the railways hereby conveyed or intended to be, and all taxes and assessments prior to the lien of these presents.

Second: To the payment of the whole amount of principal and interest which shall then be owing or unpaid upon the said bonds or any of them, whether the said principal, by the tenor of these bonds, be then due or yet to become due; and in
139 case of a deficiency of such proceeds to pay in full the whole amount of principal and interest owing or unpaid upon the said bonds, they shall be paid ratably in proportion to the amounts owing and unpaid upon them, respectively, and without discrimination as between principal and interest, and without preference of any one bond or interest coupon over any of the others.

Third: To pay over the surplus, if any, to whomsoever may be lawfully entitled to receive the same by the judgment of some court of competent jurisdiction.

The receipt of the Trustee or Trustees who shall make the sale hereinbefore authorized, shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their pur-

chase money, and such purchaser or purchasers, his or their heirs or assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of such Trustee or Trustees therefor, be obliged to see to the application of such purchase money upon or for the trusts or purposes of these presents, or be in any wise answerable for any loss, misapplication or non-application of such purchase money by the Trustee or Trustees.

The foregoing provisions for enforcing the security intended to be given by this Indenture are cumulative to the ordinary remedy by foreclosure in the Courts, and the Trustee hereunder upon default being made as aforesaid, may, and upon being requested by the bondholders hereunder, as herein provided, shall, take appropriate proceedings in the Courts to enforce the security hereby intended to be given.

Eighth: It shall be the duty of, and it is hereby made obligatory upon the said Trustee, upon proper indemnification as hereinafter provided, to execute the power of entry and sale hereby granted, or both, or to take appropriate proceedings at law or inequity to enforce the rights of the Trustee and of the bondholders under these presents upon requisition in writing as hereinafter provided, to-wit:

1st. If default be made in the payment of the money hereby secured, principal or interest, or any part thereof, as aforesaid, or in the payment of taxes, assessments or other governmental charges lawfully levied or assessed upon the lands railways or other property hereby conveyed, such requisition shall be by not less than a majority in interest of the holders of the bonds hereby secured and then outstanding. and shall be by an instrument or covenant instruments in writing, signed by such bondholders or by their attorneys in fact duly authorized for that purpose, and proved as hereinafter provided; and upon such requisition the said Trustee shall proceed forthwith to enforce the rights of the said Trustee and of the bondholders under these presents, by sale, or entry, or both. according to such requisition, or by judicial proceedings for such purpose or purposes, as the said bondholders shall direct; or, failing such direction as it being advised by counsel learned in the law, shall deem most expedient in the interest of the bondholders secured hereby.

2nd. If such default be in respect of any other covenant or condition in said bonds or herein contained, to be kept and performed by the said party of the first part then such requisition must be by not less than a majority in interest of the holders of the bonds secured hereby and then outstanding and must be

by an instrument in writing, signed by such bondholders or their attorneys in fact, and proved as herein provided.

141 Ninth: in case of any default on its part as aforesaid, the party of the first part shall not and will not set up, claim or seek to take advantage of any appraisement valuation, stay, extension or redemption laws now existing, or which may hereafter be passed in the State of Florida, in order to prevent or hinder the enforcement or foreclosure of this Trust Deed or Mortgage, or the absolute sale of the premises, estate, property, rights and franchises hereby conveyed, or in the final and absolute putting into possession thereof immediately after such sale, of the purchaser or purchasers thereat, but hereby waives the benefit of all such laws.

Tenth: Upon the filing of a bill of equity or other commencement of judicial proceedings to enforce the rights of the Trustee and of the bondholders under these presents the said Trustee shall be entitled to the appointment by any Court of competent jurisdiction, of a receiver or receivers of the lands, railway and other property hereby mortgaged, and of the earnings, income, rents, issues, and profits thereof, pending such proceedings with such powers as the Court making such appointment shall confer.

Eleventh: The party hereto of the first part, for itself and all corporations hereinafter claiming through or under it, or who may at any time hereafter become holders of liens junior to that of these presents, hereby expressly waives and releases all right to have the estates comprised in the security intended to be created by these presents marshalled upon any foreclosure or other enforcement thereof; and the Trustee herein and any Court in which foreclosure of this Trust Deed or Mortgage or administration of the trusts hereby created is sought, shall have the right to sell the entire property of every de-

142 description comprised in or subject to the trusts created by this indenture. as a whole in one single lot, if it shall in its discretion think fit; and a majority in interest of said bondholders may by an instrument or concurrent instruments in writing, proved as herein provided, direct the Trustee or petition the said Court to sell the property in such manner.

Twelfth: In case of any foreclosure sale, or any sale under the provisions hereof, the purchaser or purchasers at such sale shall be entitled in making settlement for, or payment of, the purchase money bidden, to turn in toward the payment of such purchase money any of the bonds secured hereby held by such purchaser or purchasers, counting such bonds for that purpose at the sum which shall be payable out of the net proceeds of such sale to the holder or holders of such bonds, as his or their just share of such net proceeds, after allowing for the proportion of payment which may be required in cash for the

costs and expenses of the sale; and if such share of net proceeds shall be less than the amount then due upon such bonds, to make such settlement by receipting on such bonds the amount to be credited thereon.

Thirteenth: Whenever the party of the first part shall have deposited with the said Trustee a sum not less than Fifty Thousand Dollars, it shall be the duty of the said Trustee, upon request of the party of the first part, to redeem said bonds in the manner hereinafter provided, viz:

The Trustee shall purchase therewith so many of the said bonds as the sum on hand will suffice for, at the market price, not exceeding, however, their par value and accrued interest. If, however the Trustee can purchase no bonds at or within the limit thus fixed, the Trustee shall select by lot for redemption so many of said bonds as such money will
143 suffice to pay for in the coin in which such bonds are payable, and shall forthwith give notice of such selection, and call in the bonds so selected by advertisement in one or more newspapers of general circulation published in the City of New York once in each week, for at least six consecutive weeks, and until the day for the next payment of semi-annual interest on said bonds, and on and after that day, on surrender to the Trustee of any bond so called in, with all unpaid coupons for interest hereto belonging, the Trustee shall, out of the said moneys, redeem the same at the rate aforesaid.

Interest for each bond so called and which shall not be delivered for redemption as aforesaid, shall cease on the day designated therefor in the advertisement, which shall be a day when the semi-annual interest hereon becomes due and the coupons representing interest accruing after that day shall be void and the company shall not be liable for such interest.

All bonds so purchased or redeemed by the Trustee, together with the coupons thereto belonging, as soon as received by the said Trustee shall be effectually cancelled and shall be surrendered to the company.

Fourteenth: The said Trustee may, and upon request of the party of the first part shall, cancel the lien of these presents and execute and deliver to the party of the first part such deeds as shall be requisite to satisfy the lien hereof, and reconvey to the party of the first part the estate and title hereby conveyed or intended to be, whenever all the bonds and
144 coupons secured hereby which shall have been duly issued, shall be paid and cancelled or destroyed.

Fifteenth: Meetings of the holders of the bonds hereby secured for the determination of, or action upon, any of the questions upon which, by any of the provisions hereof, the holders of the said bonds may have the right to decide may be

called after first giving notice of the time and place of such meeting by advertisement in one paper published in the City of New York once a week for four weeks next preceding such meeting, to be held in the City of New York, or other suitable place, by the then Trustee or by a majority in interest of the said bondholders or in such other manner as may from time to time be fixed by a majority in interest of said bondholders. All acts or resolutions of the said bondholders affecting any of the rights or remedies, or for the benefit of the said bondholders, or the duty of the Trustee, or in pursuance of the trust hereby created, shall be authenticated by an instrument or instruments in writing, signed by all persons assenting thereto, or their attorneys in fact and also by a record of the proceedings of such meeting. Any instrument in writing required by the provisions of this Indenture to be executed by the holders of the bonds hereby secured, may be in any number of parts, The execution thereof shall be deemed sufficiently proved if each signature thereto and the serial number of the bonds which each person signing the same shall claim to hold shall be duly certified to by a notary public or other officer authorized to take acknowledgment of deeds under his official seal. The execution of each power of attorney under which any person shall claim to act for another in signing any such instrument, shall be certified to by a notary public or other officer authorized to take acknowledgment of deeds under his official seal.

Sixteenth: No act or resolution of any meeting of
145 bondholders, or of the Trustee, nor any act or election of, or instrument executed by a majority in interest of all such bondholders, shall impair, control or affect the rights, interests or remedies, legal or equitable of any non-assenting bondholders except in the particulars and to the extent to which the same is made expressly controlling by the provisions contained in this Indenture.

Seventeenth: It is hereby declared to be a condition upon which the said party of the second part, and its successor or successors in the trusts hereby created, have assented to these presents and accepted the trusts thereby created that the said Trustee shall not in any manner be held responsible for persons employed by it, when selectd with reasonable care, nor shall the said Trustee be answerable, except for its own willful default, but the foregoing exemptions shall not apply to the liability of the Trustee in regard to any sum of money deposited with it; and in all cases the said Trustee, the party of the second part, as shall be authorized to pay such reasonable compensation as it shall deem proper to the counsel, attorneys, officers, agents, servants and employes whom it may reasonably employ in the administration or management of this trust,

and the said Trustee and its successor or successors, shall have, and be entitled to, just compensation for all services which it or they may render in connection with the administration or management of the trusts hereby created, to be paid by the said party of the first part out of the trust estate.

146 The party of the second part shall not be under any obligation to take any action towards the execution of this trust, which, in its opinion, will be likely to involve it in personal expense or liability, unless one or more of said bondholders shall, as often as required by said Trustee give it reasonable indemnity against the same anything herein to the contrary notwithstanding. The said Trustee may resign and discharge itself of the trust hereby created, by notice in writing to the party of the first part to be given at least three months before such resignation shall take effect, or such shorter time as the party of the first part shall accept as adequate.

And whenever a vacancy shall occur in the office of Trustee hereunder, by resignation or otherwise, the Board of Directors of the party of the first part, or its successors or assigns shall have the right to appoint a successor or successors to fill such vacancy, which appointment shall be attested by the certificate in writing of the President and Secretary of the party of the first part, under its corporate seal, duly acknowledged, and be recorded in the office or offices of the clerk of the circuit court in each of the counties through which said road runs in the State of Florida,

Notice of such appointment shall be given by publication in at least two newspapers published in the City of New York, at least once a week for one month thereafter; and the successor or successors appointed as aforesaid, shall continue to be the Trustee or Trustees hereunder until a majority in interest of the holders of the bonds hereby secured then outstanding shall, by an instrument or concurrent instruments in writing, executed under their hands and seals, or the hands and seals of their attorneys in fact, duly authorized for that purpose,

147 duly acknowledged and filed in the office or offices of the clerk of the Circuit Court in each County through which the road runs in the State of Florida, appoint a new Trustee, or new Trustees, to act hereunder, in which case, upon the filing of such instrument or instruments, the Trustee or Trustees thereby appointed shall, without any further act, deed or conveyance, become the Trustee or Trustees hereunder.

And if said Board of Directors shall, for thirty days, neglect or refuse to fill any such vacancy, the same may forthwith be filled by a majority in interest of the holders of bonds secured then outstanding, by filing, as aforesaid, the instrument or instruments of appointment hereinbefore specified.

An appointment made in the manner hereinbefore prescribed, by or in behalf of a majority in interest of the holders of the bonds hereby secured then outstanding, shall supersede any appointment to fill a vacancy theretofore made in any other manner whatsoever; and any Trustee or Trustees appointed to fill such vacancy or to succeed any Trustee or Trustees hereunder, shall be vested with and entitled to all the rights, title, interest and estate, powers, duties and trusts herein conveyed and contained, as if originally named in this Trust Deed or Mortgage.

Eighteenth: The term of words "Trustee" or "said Trustee," as used in these presents, shall be held and construed to mean the Trustee, party of the second part, or its successor or successors for the time being, and said successor or successors shall have and be possessed of, and shall be competent to exercise all the estate, rights, property and powers hereby granted to or conferred upon the party hereof of the second part.

148 In witness whereof, the party hereto of the first part has caused its corporate seal to be hereunto affixed and attested by its Secretary, and these presents to be signed by its President, in pursuance of a resolution of its Board of Directors and the party of the second part, in token of acceptance of the trusts hereby created, has caused its corporate seal to be hereto affixed and attested by its Secretary and these presents to be signed by its President, the day and year first above written.

FLORIDA EAST COAST RAILWAY COMPANY.
By H. M. FLAGLER, (Seal.)
(Corporate Seal.) *President.*

Signed, sealed and delivered in presence of—
W. P. MCCAFFRAY
C. D. BOICE

Attest: J. C. SALTER, *Secretary.*

COLONIAL TRUST COMPANY, TRUSTEE.
(Seal.)
By J. W. TAPPIN,
V. President.

P. T. BABCOCK
PERCY GRAMIN

Attest: E. L. JUDSON, *Secretary.*
(Corporate Seal.)

149 STATE OF NEW YORK }
CITY AND COUNTY OF NEW YORK } *ss.*

Be it remembered, that on this first day of October, A. D. 1902, before me, a Commissioner of Deeds for the State of Florida in the City of New York, County and State, personally appeared H. M. Flagler, the President of the Florida East Coast Railway Company and J. C. Salter, the Secretary of said Company, to me respectively personally known and known to me to be such officers, who, being by me duly severally sworn did depose and say that he, the said H. M. Flagler, and he, the said J. C. Salter, was and is the President and Secretary of said Company, respectively; that they know the corporate seal of said Company; that the seal affixed to the foregoing instrument purporting to be the corporate seal of said Company is such corporate seal; that it was affixed thereto by order of the Board of Directors of said Company, and its corporate name signed thereto; and that the said H. M. Flagler and J. C. Salter signed their names thereto by the like order as such President and Secretary of said Company, respectively.

And the said H. M. Flagler and J. C. Salter, as such President and Secretary aforesaid, further acknowledged to me that they executed said instrument as their free and voluntary act and deed of said Company for the use and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal the first day of October, A. D. 1902.

LAWRENCE C. HAINES,
Commissioner of Deeds for the State of Florida in the City, County and State of New York.
(Commissioner's Seal.)

150 STATE OF NEW YORK }
CITY AND COUNTY OF NEW YORK } *ss.*

Be it remembered, that on this 10th day of October, 1902, before me, Commissioner of Deeds for the State of Florida in the City, County and State of New York, personally appeared James W. Tappin, Vice-President of the Colonial Trust Company, and E. L. Judson, Secretary of said Company, to me respectively personally known, and known to me to be said officers, who, being by me duly severally sworn, did depose and say that he, the said Vice-President, and he, the said Secretary was and is the Vice-President and Secretary of said Company, respectively; that they know the corporate seal of said Company; that the seal affixed to the foregoing instrument purporting to be the corporate seal of said Company is such corporate seal; that it was affixed thereto by order of the Board of Directors of said Company and its corporate name signed thereto; and that the said Vice-President and Secretary signed their names thereto by the like order as such Vice-President and Secretary of said Company, respectively.

And the said J. W. Tappin and E. L. Judson, as such Vice-President and Secretary aforesaid, further acknowledged to me that they executed said instrument as their free and voluntary act and deed and as the free and voluntary act and deed of said Company for the uses and purposes therein expressed.

In witness wheerof, I have hereunto set my hand and affixed my official seal the 10th day of October, A. D. 1902.

LAWRENCE C. HAINES,
Commissioner of Deeds for the State of Florida in the City, County and State of New York.
(Commissioner's Seal.)

151 EXHIBIT "4."

Exhibit showing statement of Plant Account and capital invested by the Florida East Coast Railway Company to the 13th of June, 1906. Also outstanding liabilities and capital stock of said Company.

STATEMENT OF PLANT ACCOUNT

Plant	$13,279,241.91
Equipment	2,300,038.11
Real Estate used for R. R. purposes	116,942.99
Biscayne Bay Real Estate	25,104.46
A. C. L. & F. E. C. Terminals, ¼ interest	146,708.30
Supplies, Roadway	105,879.73
Supplies, Shops	170,742.36
Supplies, Stationer	3,792.80
Supplies, Buffet	3,485.43
Tie Account	60,184.33
Locomotive Fuel	55,583.34
Total	$16,267,703.76

152 LIABILITIES.

Capital stock, on which no dividends are paid	$ 1,000,000.00
Number of Bonds issued and now outstanding:	
7259 1st Mortgage 5%	7,259,000.00
6000 2nd Mortgage 5%	6,000,000.00
Total bonded indebtedness	$13,259,000.00
Amount of annual interest on same	662,950.00
Floating debt on road from Jacksonville to Miami	1,938,508.61
Floating debt, annual interest	96,925.43

Dividends paid: None.

Cost of road, 1897, $5,028,395.95; Eqpt. $727,600.77.

Cost of road, April 30th, 1906, $13,279,241.91; Eqpt., $2,300,038.11.

153 EXHIBIT "5."

Tabulated Statement showing gross earnings, sources and expenses, including taxes and betterments and equipments of the Florida East Coast Railway Company for thirteen fiscal years beginning July 1st, 1893, and ending June 30th, of each and every succeeding year to June 30th, 1906, as follows, to-wit:

Fiscal year ending June 30th, 1894

Earnings

Total ordinary gross earnings	$532,252.25	
Miscellaneous earnings	43,971.49	
Total gross earnings from all sources		$576,223.74

Expenditures

Ordinary operating expenses	$466.520.24	
Betterments and equipment	23,432.53	
Taxes	23,199.83	
Miscellaneous expenditures	3,417.66	
Total expenses		$496.570.26
Net earnings		79,653.48
Int. on funded indebtedness		135,990.00
Deficit		$56,336.52

Fiscal year ending June 30th, 1895

Earnings

Total ordinary gross earnings	$512,195.55	
Miscellaneous earnings	65,970.47	
Total gross earnings from all sources		$578,166.02

Expenditures

Ordinary operating expenses	$434,086.22	
Betterments and equipments	16,445.45	
Miscellaneous expenses	64,159.66	
Taxes	36,681.73	

Net Earnings (1895)

Total expenses	$551,373.46
154 Net earnings	26,792.56
Int. on funded indebtedness	137,240.00
Deficit	$110,240.00

Fiscal year ending June 30th, 1896

Earnings

Total ordinary gross earnings	$619,441.52	
Miscellaneous earnings	79,127.69	
Total gross earnings from all sources		$698,569.21

Expenditures

Ordinary operating expenses	$519,844.39	
Betterments and equipment	34,945.85	
Taxes	37,649.98	
Total expenditures		$592,440.22
Net earnings		106,128.99
Int. on funded indebtedness		543,585.22
Deficit		$437,456.23

Fiscal year ending June 30th, 1897

Earnings

Total ordinary gross earnings	$701,049.03	
Miscellaneous earnings	102,893.06	
Total gross earnings from all sources		$803,942.09

Expenditures

Ordinary operating expenses	$587,923.40	
Betterments and equipment	19,443.50	
Taxes	36,490.29	
Total expenditures		$643,857.19
Net earnings		$160,084.90
Int. on funded indebtedness		340,228.08
Deficit		$180,143.18

155 Fiscal year ending June 30th, 1898

Earnings

Total ordinary gross earnings	$799,065.67	
Miscellaneous earnings	144,194.63	
Total gross earnings from all sources		$943,260.30

Expenditures

Ordinary operating expenses	$633,641.88	
Betterments and equipment	286,434.80	
Taxes	49,670.95	
Miscellaneous expenses	7,996,38	
Total expenditures		$977,744.01
Deficit		$34,483.71
Int. on funded indebtedness		222,682.08
Total Deficit		$257,165.79

Fiscal year ending June 30th, 1899

Earnings

Total ordinary gross earnings	$1,063,312.29	
Miscellaneous earnings	163,999.04	
Total gross earnings from all sources		$1,227,211.33

Expenditures

Total ordinary expenses	$720,042.08	
Betterments and equipment	212,468.04	

Taxes	50,914.30	
Miscellaneous expenses	9,777.22	
Total expenditures		$883,201.64
Net earnings		$234,109.69
Interest		206,916.66
Net profit		$ 27,193.02

(NOTE: This is the only year that shows a surplus applicable to dividend on the stock.)

156 Fiscal year ending June 30th, 1900

Earnings

Total ordinary gross earnings	$1,030.369.62	
Miscellaneous earnings	223,495.36	
Total gross earnings from all sources		$1,253,864.98

Expenditures

Ordinary operating expenses	$822,278.75	
Betterments and equipment	191,517.03	
Taxes	58,351.93	
Miscellaneous expenditures	8,234.65	
Total expenditures		$1,080,382.36
Net earnings		$173,482.62
Interest		208,510.75
Deficit		$35,028.13

Fiscal year ending June 30th, 1901

Earnings

Total ordinary gross earnings	$1,313,380.17	
Miscellaneous earnings	270,476.24	
Total gross earnings from all sources		$1,583,856.41

Expenditures

Ordinary operating expenses	$1,081,943.88	
Betterment and equipment	301,025.20	
Taxes	60,043.15	
Miscellaneous expenses	986.56	
Total expenditures		$1,443,998.79
Net earnings		$139,857.62
Interest		303,118.11
Deficit		$163,260.46

157

Fiscal year ending June 30th, 1902

Earnings

Total ordinary gross earnings	$1,605,003.08	
Miscellaneous expenditures	331,944.76	
Total gross earnings from all sources		$1,936,947.84

Expenditures

Ordinary operating expenses	$1,403,291.64	
Betterments and equipment	670,640.61	
Taxes	63,550.63	
Total expenditures		$2,248,966.92
Deficit		$312,091.08
Interest		320,413.03
Total Deficit		$632,432.11

Fiscal year ending June 30th, 1903

Earnings

Total ordinary gross earnings	$1,690,228.30	
Miscellaneous earnings	327,978.86	
Other income	2,267.06	
Total gross earnings from all sources		$2,020,474.22

Expenditures

Ordinary operating expenses	$1,351,592.78	
Betterment and equipment	164,778.16	
Taxes	71,122.25	
Total expenditures		$1,587,493.19
Net earnings		$432,981.03
Interest		523,777.18
Deficit		$90,796.15

158 Fiscal year ending June 30th, 1904

Earnings

Total gross earnings	$1,942,911.32	
Miscellaneous earnings	379,661.56	
Other Income	2,824.52	
Total gross earnings from all sources		$2,325,397.40

Expenditures

Total ordinary operating expenses	$1,501,828.25	
Betterments and equipment	275,253.97	
Taxes	69,647.40	
Total expenditures		$1,846,729.62
Net earnings		$478,667.78
Interest		666,551.36
Deficit		$187,883.58

Fiscal year ending June 30th, 1905

Earnings

Total ordinary gross earnings	$1,981,579.99	
Miscellaneous earnings	347,283,68	
Other income	8,992.81	
Total gross earnings from all sources		$2,337,856.48

Expenditures

Ordinary operating expenses	$1,608,522.53	
Betterments and equipment	235,552.18	
Taxes	74,405.33	
Total expenditures		$1,918,480.04
Net earnings		$419,376.44
Interest		666,667.09
Deficit		$247,490.65

159 Fiscal year ending June 30th, 1906

Earnings

Total ordinary gross earnings	$2,129,454.72	
Miscellaneous earnings	341,697.42	
Other income	5,086.80	
Total gross earnings from all sources		$2,476,238.94

Expenditures

Ordinary operating expenses	$1,767,646.56	
Equipment and betterments	807,093.58	
Taxes	113,042.16	
Total expenditures		$2,687,782.30
Deficit		$211,543.36
Interest		728,537.53
Total Deficit		$940,080.89

AGGREGATE RECAPITULATION

For thirteen years ending June 30th, 1906		
Total ordinary earnings	$15,920,243.51	
Miscellaneous earnings	2,822,694.26	
Other income	19,171.19	
Total gross earnings from all sources for thirteen years		$18,762,108.96
Total ordinary operating expenses	$18,879,162.60	
Betterments and equipment	3,239,031.30	
Total taxes	744,769.93	
Miscellaneous expenditures	206,056.17	
Total expenditures during thirteen years		$17,069,020.00
Net income for 13 years		$ 1,693,088.96
Int. on indebtedness for 13 years		5,004,517.09
Deficit		3,311,428.13

160 EXHIBIT "6."

Comparative Statement of Passenger Earnings of the Seaboard Air Line Railway, Atlantic Coast Line Railway, and the Florida East Coast Railway for the fiscal years ending June 30th, 1905, divided between the summer months and the tourist months, showing the percentage of passenger earnings during each season.

Seaboard Air Line passenger earnings for summer months, fiscal year		$394,912.49
Average per month		65,818.75
Passenger earnings for tourist months, same season		444,480.11
Average per month		74,246.62
Percentage of passenger earnings during summer months	47%	
Percentage of passenger earnings during tourist months	53%	
Atlantic Coast Line passenger earnings for summer months of above season		585,524.02
Average per month		97,587.32
Passenger earnings for tourist months, same season		690,413.01
Average per month		115,052.17

Percentage of passenger earnings during summer months 46%

Percentage of passenger earnings during tourist months 54%

Florida East Coast Railway passenger earnings for summer months, same season	234,699.00
Average per month	39,116.00
Passenger earnings for tourist months, same season	120,563.00
Average per month	20,093.83

Percentage of passenger earnings during summer months 24½%

Percentage of passenger earnings during tourist months 75½%

161 As shown by the above tables the passenger earnings of the Seabaord Air Line and the Atlantic Coast Line Railways are almost uniform during the entire year, showing the great bulk of passengers coming from the resident population of these two roads. The figures for the East Coast show that passenger earnings during the tourist months are more than three times as large as during the summer months, showing that the great bulk of the passenger earnings of the Florida East Coast Railway are derived from tourists and not from the resident population.

The percentage of passenger earnings on the main line of the Florida East Coast Railway is seventy-five and one-half per cent during the tourist months, and less than twenty-four and one-half per cent on the main line; the earnings of the Mayport Branch being deducted.

During the summer season the average monthly receipts on the Mayport Division being $6,417.43, and during the tourist season only $1,238.94. Deducting these figures, the percentage of passenger earnings on the main line of the Florida East Coast Railroad is nearly 78 per cent during the tourist season and something over 22 per cent during the summer months.

162 **EXHIBIT ....**

The following is a Tabulated Statement of the passenger earnings of the Seaboard Air Line Railway and the Atlantic Coast Line Railway in the State of Florida for the months and years therein stated:

Month.	1899	1900	1901	1902
January		$39,917.22	$45,892.46	$52,754.43
February		36,467.46	43,030.45	47,384.96
March		35,942.84	51,595.93	54,784.54
April		33,186.41	47,067.54	48,424.96
May		Missing	42,605.51	45,108.75
June		do	36,600.70	45,321.17
July	$31,053.66	36,028.19	40,771.57	50,908.87
August	29,144.75	33,678.70	37,378.25	54,814.32
September	28,216.63	30,824.45	37,502.19	54,725.82
October	31,114.51	33,731.73	46,481.20	55,305.31
November	35,403.40	39,891.53	46,995.66	50,264.91
December	45,039.76	48,110.35	58,709.19	64,407.55

Month.	1903	1904	1905	1906
January	$55,648.53	$64,407.67	$71,910.74	
February	56,098.16	65,823.44	72,165.63	
March	68,996.30	76,224.34	83,608.68	
April	60,906.90	64,430.89	70,587.57	
May	56,358.35	50,258.71	65,324.21	
June	52,598.42	50,709.85	65,282.08	
July	61,055.10	66,226.90	74,843.27	
August	65,027.00	68,764.18	74,985.42	
September	55,031.09	62,283.71	64,526.23	
October	58,294.59	69,762.93	72,485.46	
November	57,313.11	62,592.69	72,915.93	
December	75,552.39	81,883.28	93,042.66	

ATLANTIC COAST LINE RAILWAY

Passenger Earnings.

Month.	1899	1900	1901	1902
January		$66,964.07	$75,484.10	$77,676.57
February		82,899.76	86,459.09	90,950.80
March		91,376.56	95,366.80	98,617.82
April		71,525.63	71,245.11	74,760.15
May		55,394.31	55,384.94	Missing
June		46,682.05	48,655.71	50,493.33
July	$41,071.29	53,601.74	77,075.45	56,036.98
August	37,501.04	44,310.38	70,775.66	36,300.75
September	36,090.38	44,674.16	51,900.57	39,096.40
October	42,909.44	52,270.86	53,973.52	46,004.80
November	50,400.25	62,021.25	62,572.83	52,520.27
December	84,311.17	74,367.93	78,720.01	76,768.72

Month.	1903	1904	1905	1906
January	$ 68,309.82	$ 96,353.35	$120,481.09	$129,789.19
February	78,581.43	99,256.32	117,147.14	138,430.41
March	91,932.24	111,980.88	122,711.56	141,546.41
April	66,880.46	88,777.38	92,439.42	
May	81,443.78	87,860.11	108,072.64	
June	81,192.50	102,489.19	119,852.69	
July	76,520.53	81,808.72	104,748.91	
August	64,041.47	92,667.51	80,402.07	
September	77,940.07	85,388.61	83,818.32	
October	63,746.52	101,786.84	91,411.48	
November	72,229.33	104,019.56	107,695.29	
December	105,826.83	129,561.16	146,284.51	

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164 Passenger Revenue including Mail and express and extra baggage.

Atlantic Coast Line	$1,565,231.57
Louisville & Nashville	379,187.76
Seaboard Air Line	1,018,365.17
Florida East Coast	1,225,934.30

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165 EXHIBIT ....

AVERAGE TONNAGE OF OTHER ROADS.

The following is a tabulated statement of the tonnage of freight on the Atlantic Coast Line Railway and the Seaboard Air Line Railway for the fiscal years therein set forth. The tonnage for the years 1902 and 1903 could not be obtained, and the tonnage of naval stores for 1904 and 1905 is not given for the Atlantic Coast Line Railway, but it is probably embraced in the tonnage of phosphate.

ATLANTIC COAST LINE RAILWAY.

Commodity.	1900 Whole tons	Commodity.	1901 Whole tons
Cotton	38,549	Cotton	34,193
Fruit & Veg.	41,342	Fruit & Veg.	50,603
Phosphate	244,682	Phosphate	274,466
Lumber	282,476	Lumerb	314,279
Cross Ties	49,054	Cross Ties	53,958
Wood	29,917	Wood	38,017
Naval Stores	126,354	Naval Stores	150,348
Fertilizers	52,943	Fertilizers	70,624

(1902 & 1903 cannot be found)

1904		1905	
Cotton	2,786	Cotton	3,202
Fruit & Veg.	102,510	Fruit & Veg.	1,166,677
Melons	21,840	Melons	27,360
Phosphate	921,123	Phosphate	1,022,091
Lumber	322,030	Lumber	276,496
Cross Ties	42,519	Cross Ties	25,784
Logs	11,890	Logs	119,890
Wood	81,996	Wood	121,963
Fertilizers	67,738	Fertilizers	63,260

SEABOARD AIR LINE RAILWAY

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Commodity.	1900 Whole tons		1901 Whole tons
Cotton	7,897	Cotton	112,456
Fruit & Veg.	12,025	Fruit & Veg.	38,136
Melons	11,526	Melons	17,857
Phosphate	257,869	Phosphate	154,972
Lumber	400,287	Lumber	1,116,672
Logs	95,776	Logs	191,876
Wood	46,680	Wood	162,133
Naval Stores	65,417	Naval Stores	143,914
Fertilizers	51,908	Fertilizers	187,138

1902		1903	
Cotton	7,486	Cotton	12,040
Fruit & Veg.	24,080	Fruit & Veg.	38,500
Melons	15,836	Melons	17,138
Phosphate	247,682	Fuller's Earth	8,500
Lumber	384,517	Phosphate	295,107
Logs	114,310	Lumber & Stvs.	553,171
Wood	26,372	Logs & Ties	87,633
Naval Stores	110,158	Wood	27,879
Fertilizer	33,788	Fertilizer	36,930

1904		1905	
Cotton	10,570	Cotton	12,518
Fruit & Veg.	61,700	Fruits & Veg.	71,032
Melons	21,630	Melons	26,552
Fuller's Earth	8,867	Fuller's Earth	10,117
Phosphate	329,765	Phosphate	310,246
Lumber & Staves	573,403	Lumber	565,299
Logs & Ties	95,594	Logs & Ties	94,555
Wood	30,386	Wood	32,513
Naval Stores	165,260	Naval Stores	190,542
Fertilizers	67,443	Fertilizers	70,279

167 EXHIBIT 6.

The following shows the freight earnings of the roads hereinafter named for the fiscal year ending June 30th, 1905.

Florida East Coast, 500 miles	$1,023,501.51
Louisville & Nashville, 210 miles	779,980.79
Seaboard Air Line, 800 miles	2,111,671.76
Atlantic Coast Line, 1,300 miles	2,945,888.72

Average Freight Earnings per mile of these roads—

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168 EXHIBIT

The following is a statement of the revenue obtained by the Florida East Coast Railway from the 1st of July, 1901, to the 31st of May, 1906, on the following commodities:

Year	Naval Stores	Oranges, etc.	Pines	Veg.
1901	$6,064.72	$10,867.67	$66,258.92	$92,624.27
1902	10,227.35	14,856.22	76,413.63	128,738.91
1903	13,355.00	15,056.07	148,275.60	99,426.96
1904	18,830.45	29,072.46	98,015.01	209,183.87
1905	22,269.50	32,141.56	88,733.37	107,281.03
1906	37,365.30	68,468.17	60,311.27	158,458.96

It will be observed that while the revenue from naval stores shows a steady increase and also that for oranges, that the revenue from pineapples and vegetables fluctuates largely; the revenue from pineapples reaching its maximum in 1903, and that from vegetables reached its maximum in 1904. The following year both these products fell off nearly 100 per cent each, and increased somewhat during the last fiscal year. The most important items of freight produced for outward shipment are governed by the seasons.

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169 EXHIBIT "7."

Local resident population on the lines of the Atlantic Coast Line Railway and the Seaboard Air Line Railway united.

Owing to the fact that the above roads run into and through

the same counties and connect at various points, the population tributary to them is united under one head.

County.	1900	1901	
Gadsden	15,204	16,511	
Leon	19,887	18,883	
Jefferson	16,195	13,130	
Madison	15,446	16,153	
Hamilton	11,881	9,921	
Sowanee	14,554	18,911	
Columbia	19,094	19,913	
Baker	19,094	19,913	
Bradford	10,295	12,943	
Clay	5,635	5,584	
Nassua	9,654	11,012	
Alachua	32,245	34,007	
Levy	8,603	9,280	
Putnam	11,641	11,193	
Marion	24,403	26,725	
Sumter	6,187	5,549	
Citrus	5,391	7,543	
Lake	7,467	7,515	
Orange	11,374	13,000	(Approximate)
Hernando	3,268	4,040	
Paseo	6,054	6,100	
Osceola	2,444	3,622	
*Volusia	5,000	6,000	
Polk	12,472	17,863	
Hillsboro	36,013	51,416	
Manatee	4,663	8,530	
DeSoto	8,047	12,446	
Lee	3,071	3,961	
Total population in 1900	332,964		
Total population in 1901		374,931	

*In estimating the county of Volusiia, the population is given running on the west side of the county through which the Atlantic Coast Line Railway runs. On the east side the population is given to the Florida East Coast Railwey. The population of this county is divided sharply, about one-half being on the west side parallel to the St. Johns River, and on the east side parallel to the Atlantic Ocean. There is very little population for 20 miles in the center of the county.

170 Local resident population on the line of the Florida East Coast Railway, excluding Duval County, common to all the roads.

Counties.	1900	1905	
St. Johns	9,165	11,003	
Putnam*	1,200	1,600	
Volusia	5,000	6,000	
Brevard	5,158	4,348	
St. Lucie		3,024	
Dade	4,955	10,000	(estimated)
Total	25,478	35,975	

*Putnam estimated population of Putnam county east of St. Johns River tributary to Florida East Coast Railway.
St. Lucie County was organized out of Brevard county in 1905.

171 Local population on the line of the Louisville and Nashville Railroad, including its Pensacola Division, Pensacola and Atlantic Divsion, and Florida and Alabama Divison.

County.	1900	1905	
Jackson	23,377	26,825	
Washington*	3,000	3,000*	
Holmes	7,762	9,027	
Walton*	4,000	6,000*	
Santa Rosa	10,293	11,801	
Escambia	28,313	31,000	(estimated)
Total	76,745	87,753	

*The estimates for Washington and Walton Counties embrace only that portion of these counties tributary to this road. If the entire counties were taken it would increase the population of 1905 something like 15 000. The great mass of the population of these counties, however, lie along the Gulf coast, and can scarcely be said to be tributary to the line of road.

172 EXHIBIT "8."

Tabulated statement showing expenses and receipts for carrying passengers on the Florida East Coast Railway during the fiscal year beginning July 1st, 1899, and ending June 30th, 1906, inclusive.

Fiscal year ending June 30, 1900.

Cost per passenger per mile, maximum rate 4c per mile,	.03.446
Average receipts per passenger per mile, includng parlor and sleeping-car fares	.03.221
Average loss per passenger per mile	.00.225
Average cost per passenger per mile on 4c maximum rate	.03.446
Average receipts per passenger per mile, without parlor and sleeping-car fares	.02.947
Average loss per passenger per mile	.00.499

Fiscal year ending June 30th, 1901.

Cost per passenger per mile, maximum rate 4c per mile,	.03.984
Average receipts per passenger per mile, including parlor and sleeping car fares	.03.243
Average loss per passenger per mile	.00.741
Average cost per passenger per mile on 4c maximum rate	.03.984
Average receipts per passenger per mile without parlor and sleeping car fares	.02.938
Average loss per passenger per mile	.01.045

Fiscal year ending June 30th, 1902.

Average receipts per passenger per mile, including parlor and sleeping car fares	.03.314
Average cost per passenger per mile, maximum 4c rate	.03.287
Profit per passenger per mile	.00.027
Average cost per passenger per mile	.03 287
Average receipts per passenger mile, without parlor and sleeping-car fares	.03.028
Average loss	.00.159

The fiscal year ending June 30th, 1902, was the first
173 and only year in which, under the maximum rate of four cents (4c) per mile, there was a small profit carrying passengers at the four-cent maximum rate over and above

average rates per mile, including parlos and sleeping-car fares. Without parlor and sleeping car fares there was a loss.

Fiscal year ending June 30th, 1903.

In November, 1902, the company made the experiment of reducing the general rate except in certain short hauls to a maximum of three cents per mile with the following results.

Average cost per passenger per mile, maximum rate 3c 03.528
Average receipts per passenger per mile, including parlor and sleeping-car fares 03.040

Average loss per passenger per mile 00.488

Average cost per passenger per mile at 3c rate 03.528
Average receipts per passenger per mile without parlor and sleeping-car fares 02.755

Average loss per passenger per mile 00.773

Fiscal year ending June 30th, 1904

Average cost per passenger per mile, maximum rate, 3c 03.669
Average receipts per passenger per mile, including parlor and sleeping-car fares 02.950

Average loss per passenger per mile 00.719

Average cost per passenger per mile 03.669

Average receipts per passenger per mile, without sleeping and parlor-car fares 02.794

Average loss per passenger per mile without parlor and sleeping-car fares 01.995

Fiscal year ending June 30th, 1905

Average cost per passenger per mile, maximum 3c rate 03.115
Average receipts per passenger per mile, including parlor and sleeping-car fares 02.969

Average loss per passenger per mile 00.146

174 Average cost per passenger per mile 03.115
Average receipts per passenger per mile, withou parlor and sleeping-car fares 02.688

Average loss per passenger per mile 00.427

Fiscal year ending June 30th, 1906

Average cost per passenger per mile, maximum 3c rate 03.261

Average receipts per passenger per mile, without par- and sleeping car fares 03.025

Average loss per passenger per mile 00.236

Average cost per passenger per mile 03.261

Average receipts per passenger per mile, without parlor and sleeping-car fares 02.739

Average loss per passenger per mile 00.522

The cost of carrying passengers is estimated on the ratio of the passenger train mileage to the total mileage, as is necessarily done by all roads.

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175 EXHIBIT "8½."

Statement of acreage conveyed by the State of Florida to the different organizations, now composing the Florida East Coast Railway Company.

	Acres
Jacksonville, St. Augustine and Halifax River Railway..	56,782.15
St. Johns & Halifax River Railway	110,398.58
St. Johns Railway Company	43,315.16
St. Augustine & Halifax River Railway Company	41,510.29
	251,006.18
of which these different organizations conveyed, prior to January 1, 1892	17,926.19
Leaving a balance of	223,079.99
acres, which was conveyed by them to the Florida East Coast Railway Company, of which acreage the said Florida East Coast Railway Company has sold, approximately	148,889.49
acres.	
Balance now owned by said Company	84,190.50
acres.	

For the said 148,869.49 acres the said Florida East Coast Railway Company received approximately $66,899.11, or an average of 45c per acre.

These lands are situated in the Counties of Duval, St. Johns, Clay, Putnam and Volusia.

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EXHIBIT "9."

Passenger earnings for the fiscal year beginning July 1st, 1899, and ending June 30th, 1906, divided into what are known as tourist months and summer months.

(For year ending June 30th, 1900)

Year	Month	Amount	
1899	July	$17,948.79	
	Aug.	17,078.02	
	Sept.	18,039.48	
	Oct.	14,785.71	
	Nov.	18,949.87	
1900	June	17,572.54	
			$104,374.41
	Dec.	$27,282.32	
	Jan.	53,959.01	
	Feby.	103,659.92	
	March	136,402.78	
	April	56,657.18	
	May	24,280.41	
			$402,241.62
	Total for year		$506,616.03

(For year ending June 30th, 1901)

Year	Month	Amount	
1900	July	$ 26,045.26	
	Aug.	22,957.88	
	Sept.	19,496.65	
	Oct.	21,599.58	
	Nov.	24,629.34	
(1901)	June	25,154.90	
			139,883.61
	Dec.	$35,090.14	
	Jan.	66,817.58	
	Feby.	128,372.30	
	March	164,511.61	
	April	66,272.37	
	May	30,143.87	
			$491,207.87
	Total for year		$631,091.48

177 EXHIBIT "10."

Tabulated statement of the passenger earnings in detail of the Florida East Coast Railway Company from July 11st, 1901, to June 30th, 1906, inclusive, showing the nature and character of the passenger traffic and divided between the tourist months and the summer months, as follows:

Year—Month	From points in Fla. to points in other States	From other States to points in Fla.	From other States thru' Fla. to other states	From points in Fla. to points in Fla.	Total
1901—					
July	$1,082.99	$2,867.70	$430.81	$26,779.82	$31,161.32
Aug.	981.37	1,310.70	106.64	24,105.28	26,503.99
Sept.	422.76	1,043.91	199.45	21,113.85	22,799.97
Oct.	546.43	1,060.12	258.34	22,720.92	24,585.81
Nov.	480.01	3,156.59	140.17	25,501.50	29,278.27
June 1902	1,452.48	678.86	648.50	26,990.97	29,770.81
Aggregate earnings for 6 summer months:	$4,966.04	$10,117.88	$1,783.91	$147,212.34	$164.080.17
1901—					
Dec. .	$918.74	$7,701.42	$288.80	$38,069.46	$46,978.42
1902—					
Jan. .	2,157.78	13,241.79	1,539.58	69,267.72	86,206.87
Feb. .	7,907.55	40,647.31	4,047.62	104,568.06	157,170.54
Mar. .	9,979.97	61,001.67	6,264.89	113,255.32	190,502.85
Apr. .	2,707.13	24,448.34	3,448.03	41,823.35	72,426.85
May .	1,870.50	2,871.36	1,259.48	34,011.67	40,013.01
	$25,541.67	$149,911.89	$16,848.40	$400,996.58	$593,298.54

Passenger Earnings in Detail, July 1, 1901, to June 30, 1906. (Inclusive.)

Year-Month	From points in Fla. to Points in other States	From other States to Points in Fla.	From other States thro' Fla. to other States	From points in Fla. to points in Fla.	Total
1901—					
July	$1,082.99	$ 2,867.70	$ 430.81	$ 26,779.82	$ 31,161.32
Aug.	981.37	1,310.70	106.64	24,105.28	26,503.99
Sept. ...	422.76	1,043.91	199.45	21,113.85	22,799.97
Oct.	546.43	1,060.12	258.34	22,720.92	24,585.81
Nov.	480.01	3,156.59	140.17	25,501.50	29,278.27
June 1902	1,452.48	678.86	648.50	26,990.97	29,770.81
Aggregate earnings for 6 summer months:	$4,966.04	$10,117.88	$1,783.91	$147,212.34	$164,080.17
1901—					
Dec.	$ 918.74	$ 7,701.42	$ 288.80	$ 38,069.46	$ 46,978.42
1902—					
Jan. .	2,157.78	13,241.79	1,539.58	69,267.72	86,206.87
Feb. .	7,907.55	40,647.31	4,047.62	104,568.06	157,170.54
Mar. .	9,979.97	61,001.67	6,264.89	113,255.32	190,502.85
Apr. .	2,707.13	24,448.34	3,448.03	41,823.35	72,426.85
May .	1,870.50	2,871.36	1,259.48	34,011.67	40,013.01
Aggregate earnings for 6 tourist months:	$25,541.67	$149,911.89	$16,848.40	$400,996.58	$593,298.54

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EXHIBIT "11."

Passenger Earnings, Mayport Division, Years Ending June 30th, 1905 and 1906.

	1905	1906
July	$7 401.43	$9,270.34
August	4,664.38	4,522.54
September	1,963.44	2 044.05
October	985.00	1,183.80
November	606.69	928.70
December	716.22	823.70
January	498.40	861.10
February	454.35	1,053.10
March	707.25	1,774.43
April	1 342.62	4,537.66
May	3,622.51	5,056.72
June	8,537.08	8,699.90
	$31,499.37	$40,756.04

Gross Earnings, Mayport Division, Years Ending June 30th, 1905 and 1906.

1905	1906
$47,418.27	$61,496.07

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EXHIBIT "12."

Statement of Earnings and Expenses on Mayport Divison for the Fiscal Years Ending June 30, 1905, and June 30, 1906.

1905		
Earnings		$47,418.27
Ordinary expenses		58,367.37
Deficit		$10,949.10
1906		
Earnings		$61,496.07
Ordinary expenses	$55,138.09	
Betterments	6,515.70	
Total		$61,653.79
Deficit		$157.72

To the foregoing must be added the proportionate expense for equipment and general expenses not included in the above. These added will make the deficit for 1905 in the neighborhood of $16,000, and the deficit for 1906 about $9,000.

181 MAYPORT DIVISION 13.

Average receipts per passenger per mile by months, July, 1904, to June, 1906, including Parlor Car Earnings.

July, 1904, to June 30th, 1905

1904	July	01.488	1905	Jan.	01.616
	August	01.414		Feby.	01.560
	Sept.	01.555		March	01.535
	Oct.	01.595		April	01.585
	Nov.	01.525		May	01.490
	Dec.	01.672		June	01.360

July, 1905, to June 30th, 1906

(1905)	July	01.492		Oct.	01.793
	Aug.	01.372		Nov.	01.621
	Sept.	01.479		Dec.	01.653
(1906)	Jan.	01.712		April	01.627
	Feby.	01.537		May	01.523
	March	01.649		June	01.437

PARLOR CARS NOT INCLUDED.

1904	July	01.413	(1905)	July	01.429
	Aug.	01.374		Aug.	01.390
	June	01.298		Sept.	01.459
				March	01.629
				April	01.554
				May	01.461
				June	01.380

(Months not shown Parlor cars were not run)

MAYPORT DIVISION

Average Rate per Passenger per Mile, for 12 Months to June 30th.

1905-1906

INCLUDING PARLOR CARS

1905	1906
$01.459	$01.506

WITHOUT PARLOR CARS

$01.419	$01.456

FLORIDA EAST COAST RAILWAY COMPANY

182 Freight earnings, Mayport Division

Earnings Freight Forwarded:	(1905)	(1906)
Local	$ 4,025.56	$ 4,517.28
Through	7,161.04	6,514.46
Total	$11,186.60	$11,031.74
Earnings Freight Received:		
Local	$4,419.48	$6,730.76
Through	129.26	512.11
Total	$4,548.74	$7,242.87

Through rates are 25% of total revenue, irrespective of point of origin or destination.

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Local rates apply on local business.

183 EXHIBITS " 15 AND 16."

Freight and Passenger Earnings, All Stations, for Years Ending June 30th, 1905.

Station.	Amt.	Station.	Amt.
*Jaxville	$1,373,064.87	Dinner Island	75.70
*So. Jaxville	10,264.29	Neoga	1,624.25
St. Nicholas	135.42	Espanola	4,569.41
Spring Glen	133.26	Bunnell	7,246.33
Hogan	312.97	*Dupont	16,047.23
Center Park	2,693.70	Harwood	4,801.16
San Pablo	827.69	*Ormond	66,766.78
Pablo Creek	385.82	Tomoka	56.85
*Pablo Beach	21,752.29	A-101	12.00
Cashens	29.68	Favorita	22.60
Atlantic Beach	6,427.09	Holly Hill	825.13
Burnside Beach	170.63	Kingston	583.93
East Mayport	515.61	*Daytona	63,913.58
*Mayport	37,493.50	Blake	840.51
Bowden	138.39	*Port Orange	7,382.05
Nesbitt	1,270.29	Spruce Creek	186.07
Greenland	2,873.19	Turnbull Bay	38.08
*Bayard	66,300.44	*New Smyrna	40,344.05
Pittsburgh	11.45	Glencoe	685.99
A-18	101.37	Indian Springs	2,769.35
Durbin	6,203.50	Rogers	1,077.93
Summers	.25	Laws Mill	4,608.23
Clarksville	71.50	A-116	13.22
Woodland	143.61	A-121	4.00
Sampson	103.83	A-122	532.27
Magnolia	323.55	*Lake Helen	36,601.54
*St. Augustine	300,967.15	*Orange City	11,614.55
A-39	131.75	Twin Oaks	417.45
Hurds	477.03	*Orange City Jct.	16,602.70
Middleton	1,831.99	Hawks Park	1,999.84
Armstrong	4,943.42	A-133	237.99
Holy Branch	321.88	Hucomer	93.56
*Hastings	46,698.12	*Oak Hill	9,747.37
Orange Mills	1,039.02	A-138	1,941.16
Clark's Siding	1,392.59	Lyrata	225.98
*East Palatka	12,979.92	East Aurantia	402.41
*Palatka	92,848.80	Wiley Ave.	1,560.41
*San Mateo	3,960.50	A-136	13.00
Howard's Ridge	66.25	East Mims	619.21
Yelvington	4,019.01	*Titusville	54,934.12
Roy	1,972.21	Lagrange	2,924.49
		Mims	2,159.14

184 Turnbull ...	5,045.77	A-242	1,567.94
Hansell's Mill	635.15	*Ft. Pierce	60,115.12
Maytown	2,417.55	A-243	1,300.86
Aurantio	57.99	C-243	.92
Cowcreek	1,695.69	A-244	1,360.03
Kalamazoo	12,070.20	C-244	4.14
Osteen	4,744.21	White City	6,436.52
Garfield	214.79	A-246	761.19
*Enterprise	1,521.17	Eldred	5,255.37
Enterprise Jct. ...	95.50	A-248	589.16
A-147	314.32	A-249	.75
*Sanford	34,512.57	Ankona	3,782.89
Pritchards	1,851.26	A-250	736.87
Delespine	4,377.83	B-250	38.10
Frondenac	665.29	A-251	831.74
Sharps	1,390.34	B-251	3.12
City Point	2,806.23	Tibbals	4,444.85
A-165	9.00	A-252	606.59
A-166	26.36	B-252	60.35
A-171	170.02	A-253	355.14
B-171	110.60	B-253	682.59
A-170	103.36	E-253	2.88
A-173	811.42	*Eden	6,729.01
Magruder	758.96	A-254	1,410.94
*Cocoa	45,607.77	B-254	34.35
*Rockledge	28,634.69	A-255	2,687.90
Coquina	304.80	B-255	11,28
Garvey	1,495.74	A-256	448.95
A-172	25.22	*Jensen	34,811.00
B-175	20.92	Ruxton	786.72
A-176	11.00	Chitola	1,214.41
Bonaventure	2,708.66	A-257	813.44
Pineda	222.76	Rio	2,016.76
*Eaugallis	33,323.82	A-259	209.11
*Melbourne	13,152.87	Wawa	1,613.95
Tillman	382.77	A-261	51.47
Malabar	2,669.13	B-257	5.30
Valkaria	827.96	B-261	28.16
Grant	2,380.59	*Stewart	28,389.21
Micco	1,202.72	Aberdeen	125.36
Roseland	1 439.65	Fruits	406.81
*Sebastian	9,700.82	A-262	305.32
A-202	1.44	A-265	43.35
Wabasso	2,411.95	Gomez	2,411.82
A-207	.56	Hobe Sound	3,557.83
Quay	4,678.72	A-275	277.73
A-223	157.88	A-276	4.74
Gifford	1,880.64	A-277	.75
A-227	2,368.04	Likely-278	1,338.29
A-231	550.60	A-279	82.43
Vero	690.39	A-287	11.90
Oslow	291.30	A-288	99.09

*West Jupiter	15,742.83	*Delray	32,614.67
A-290	479.33	A-318	64.36
A-293	43.33	Deerfield	6,077.88
A-294	17.92	Boca Ratone	4,119.89
Riveria	387.04	Pompano	8,204.11
A-295	756.00	Colohatchee	2,494.86
A-296	16.96	*Ft. Lauderdale ...	35,194.53
—372	436.62	A-321	1,523.06
—373	11.53	B-321	7.00
—375	24.73	A-244	74.63
—378	5.27	*Dania	18,168.81
—385	1.53	*Hallendale	13,325.28
—370	2.22	Ojus	3,348.73
A-234	444.06	Fulford	7,999.34
A-235	462.74	Arch Creek	1,950.14
A-236	1.73	A-354	90.48
A-237	1,464.20	A-357	9,023.24
A-239	1.43	Little River	10,582.40
A-240	203.43	*Lemon City	5,851.22
St. Lucie	1,698.96	Biscayne	1,936.38
A-297	561.33	Buena Vista	2,083.85
185 B-297	78.70	*Miami	510,377.33
A-299	92.62	Cocoanut Grove ...	2,303.37
B-299	4.20	Prairia	8.70
A-300	1,563.66	Larkin	2,998.26
B-300	989.56	Kendall	2,779.97
*West Palm Beach	174,855.93	Benson	1,498.86
*Palm Beach	185,569.47	Rockdale	2,957.61
A-301	472.92	Perrine	6,189.40
A-302	1,357.03	Peters	6,798.74
C-302	.26	Goulds	1,595.11
Lantana	838.60	Black Point	679.94
A-305	3.52	Gossman	1,629.13
Hypoluxo	1,895.30	Silver Pond	109.13
A-311	229.86	Homestead	1,779.65
*Boynton	24,825.42	—392	2.00
A-314	1,323.12		

The foregoing exhibit shows the gross business of
186 each station covering the freight and passenger earnings forwarded from the stations as well as those received at such stations. As each station is credited with the gross amount forwarded to others it necessarily makes the aggregate double what the gross business of the road is. In the case of non-agency stations, the freight is all prepaid to such stations, and consequently the actual cash receipts at such stations is very small. In the case of non-agency stations freight is shipped collect, and is collected at the end of its destination, save in exceptional cases, where parties desire to prepay freight from such stations.

187 **EXHIBIT "17."**

To the Honorable Railroad Commission,
Tallahassee, Fla.

Whereas, the settlement of Cocoanut Grove, in Dade County, is one of the largest in said County, having a population of about 1,000 persons in the Precinct bearing that name, besides a large non-resident population of Cottagers and Boarders in the Winter;

And, Whereas, while there is a good Depot building, Agent's dwelling, etc., at the Station of the Florida East Coast Railroad bearing that name, there is no agent of said Railroad Company nearer than Miami five miles to the north.

Therefore, we, citizens and property owners in the said settlement of Cocoanut Grove, do respectfully petition your honorable body to order the Florida East Coast Railroad Company to appoint and maintain an Agent at the said station, for the proper transaction of the business of our community.

A. A. Boggs
B. C. Tousey
Kirk Monroe
M. S. Burbank
Wm. Archer
W. J. Shone
A. W. Coats
Edward Pent
A. F. Thomas
F. H. Kanen
E. I. Potter
F. A. Thomas
J. S. Pent
Geo. H. Rabagney
A. A. Kemp
Jackson Peacock
T. U. Blizzard
R. E. Kelly
Jas. Bolton
J. S. Richardson
B. F. Brossart
Jno. L. Hix
E. H. Caraway

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188 Feb. 6th 1906.

File 2166

Mr. J. R. Parrott, Gen. Mgr.
St. Augustine, Fla.

Dear Sir: The Commission are sending you herewith copy of petition signed by patrons of your road in the settlement of Cocoanut Grove, Florida. The petition is self explanatory. The Commissioners would thank you to investigate this matter and advise them.

Yours truly,

(Signed) R. C. DUNN,
Secretary.

Dict. R. C. D.
22—2587

St. Augustine, Fla., Feb. 5th, 1906.

Facilities at Cocoanut Grove—Agent.

Mr. R. C. Dunn,
Secretary R. R. Com.,
Tallahassee Fla.

Dear Sir:

I have yours of the 2nd inst., enclosing copy of petition from residents of Cocoanut Grove and vicinity, asking that we appoint an agent there.

The reason that we put up good buildings there was in the hope that the business of that section would develop to such an extent as to justify the expense of a permanent agent, but thus far, such has not been the case. I will, however, look into the matter, and if it is at all possible to accommodate these people we will be more than glad to do so.

Yours truly,

(Signed) J. R. PARROTT,
Vice President.

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189 St. Augustine, Fla., Feb. 12, 1906.

Facilities at Cocoanut Grove—Agent.

Mr. R. C. Dunn,
Secy. Fla. R. R. Com.,
Tallahassee, Fla.

Dear Sir:

Referring further to yours of the 2nd inst., regarding petition from Cocoanut Grove:

This station was opened and began showing some revenue in March, 1904. Like other places along our line in order to help develop the country, as a matter of advertisement, we put up good buildings in hopes that the business would soon justify our expense so much in advance of the needs of the place, but I fear we were mistaken, as no sooner do we put up the buildings than the people want us to put someone in to occupy them as agent, regardless of the fact that the business will not justify it.

From March, 1904, to November 30th, 1905—21 months—the revenue from this station has been $4,935.00, a large portion of this earning is shown during the winter months and consists mostly of fertilizers and fruit in and out; a number of the months of the year the business is so light as not to pay expense of maintenance.

We are always willing to do what is right and proper but in this case we do not think the needs of the place demand or justify an agent being located there.

Yours truly,

(Signed) J. R. PARROTT,
Vice-President.

190 RAILROAD COMMISSION, STATE OF FLORIDA.

To the Florida East Coast Railway:

You are hereby notified that there will be a meeting of the Railroad Commission of the State of Florida, at 10 o'clock A. M., on the 6th day of March, A. D. 1905, to consider the making of an order requiring the establishment of an agency at Cocoanut Grove, Florida, a station on the line of your road.

At this meeting the Florida East Coast Railway Company will have opportunity to be heard, and to show cause, if any you have, why the proposed order should not be issued.

Done and ordered by the Railroad Commissioners of the State of Florida, in session, at their office in the city of Tallahassee, Florida, this 14th day of February, A. D. 1906.

(Signed) JEFFN. B. BROWNE,
Chairman.

Attest:
R. C. DUNN,
Secretary.

COUNTY OF ST. JOHNS
STATE OF FLORIDA

Before me personally appeared W. H. Chambers, who, being duly sworn, says that he is the General Auditor of the Florida East Coast Railway Company, that his office at St. Augustine, Fla., is the place where all records of shipments of freight are kept, and that the attached statement showing freight received at Miami, Florida, by parties residing at Cocoanut Grove Fla., is true and correct so far as his records show.

(Signed) W. H. CHAMBERS.

Sworn to and subscribed before me this 17th day
191 of March, 1906.

THEO. V. POMAS,
(S.L) *Notary Public, State of Florida.*

Freight Received at Miami by Parties Residing at Cocoanut Grove for year ending June 30th, 1905.

Name	Freight Received	Freight Forwarded
Wm. Archer	....	....
A. A. Boggs	$17.95	$70.05
M. S. Burbank	....	.95
D. S. Brossart	....	....
T. U. Blizzard	....	....
Jas. Bolton	8.60	16.20
E. H. Caraway	....	....
A. W. Coats	6.53	....

Jno. L. Hix	.....	....
F. H. Kanen	.....	....
A. A. Kemp	.....	22.43
R. E. Kelly	.....	....
Kirk Munroe	5.61	....
Edw. Pent	.....	
I. E. Potter	.....	....
J. S. Pent	.....	....
Jackson Peacock	275.64	79.20
Geo. H. Rabagney	.....	....
Geo. H. Richardson	.....	....
J. S. Richardson	.....	.64
B. C. Tousey	17.85	2.87
A. F. Thomas	.....	....
F. E. Thomas	.....	....
W. J. Shone	194.20	....
	$726.38	192.34

192 COUNTY OF ST. JOHNS
STATE OF FLORIDA

Before me personally appeared W. H. Chambers, who, being duly sworn, says that he is the general Auditor of the Florida East Coast Railway Company, that his office at St. Augustine Fla., is the place where all records of shipments of freight are kept, and that the attached statement showing freight forwarded from Miami, Florida, for the fiscal year ending June 30th. 1905, by the parties named thereon who are residents of Cocoanut Grove, is true and correct.

(Signed) W. H. CHAMBERS.

Sworn to and subscribed before me this 17th day of March. 1906.

THEO. V. POMAR,
Notary Public, State of Florida.

193 Freight Received at Cocoanut Grove, during month of August, 1905.

Name	August Kind	Amount
F. L. Church	Fertilizer	$9.73
R. R. McCormick	"	.49
J. Peacock	"	21.88
C. L. Weyzel	"	3.65
G. E. Merrick	"	7.38
C. R. Clark	"	3.65
F. Ross	"	4.38
C. J. Smith	Household Goods	1.58

J. P. Toms	Fertilizer	20.66
C. Peacock Son	Merchandise	6.12
R. Cherry	"	.45
R. F. Rice	Hardware	4.20
J. M. Wagner	Merchandise	1.82
W. P. Dusenberry	Household Goods	.52
P. C. Ranson	Merchandise	.65
Freight prepaid on Company material		681.57
		$768.74

194 Freight Received at Cocoanut Grove During Month of September, 1905.

Name	Kind	Amount
S. G. Merrick	Fertilizer	$8.02
F. L. Church	"	10.69
Geo. Chester	"	.61
F. T. Rice	"	6.81
	Vegetables	7.30
Jackson Peacock	Fertilizer	29.16
F. C. Bush	"	4.82
W. M. Mele	2 Sxs Beans	1.10
A. W. Coats	Merchandise	4.89
W. J. Shone	Fertilzer	4.88
G. B. Kellon	Merchandise	1.24
S. C. Merrick	Fertilizer	4.88
C. Peacock & Son	Merchandise	3.64
H. P. Bruce	Household Goods	1.43
W. J. Matthews	Building Material	318.54
C. G. Merrick	Fertlizer	2.20
Wm. Courtz	Household Goods	.25
R. Cherry	Merchandise	.26
J. P. Toms	"	.26
C. LeJean	Beer	1.85
Fred Rou	Merchandise	3.32
W. E. Strap	Gas Engine	8.33
		$417.67

195 STATE OF FLORIDA
COUNTY OF ST. JOHNS

Before me personally appeared W. H. Chambers, who, being duly sworn, says that he is the General Auditor of the Florida East Coast Railway Company, that his office at St. Augustine, Fla., is the place where all records of shipments of freight are

kept, and that the attached statements showing freight received at Cocoanut Grove, Fla., for the months of August and September, 1905, by the parties named therein is true and correct so far as his records show.

(Signed) W. H. CHAMBERS.

Sworn to and subscribed before me this 17th day of March, 1906.

THEO. V. POMAR.
(L.S.) *Notary Public, State of Florida.*

196 This is to certify that I have lived seevral years at Cocoanut Grove, in Dade County, Florida, and know most of the citizens of that place. I further certify that I spent two days in company with J. N. Whitner, in visiting and driving over said locality, and heard him discuss with numbers of the citizens the question of a petition to the Railroad Commission asking that the Florida East Coast Railway Company be required to keep an agent at Cocoanut Grove station, and while all of them would like to have an agent, none of them could show why the business at the station would be increased thereby to any extent.

Most of them own teams, and claimed they could haul to Miami cheaper than the railroad rate and save hauling to station.

The Montgomery Transfer Company haul to and from Miami and deliver to the homes of the people as cheap as they can pay freight and haul from Cocoanut Grove station.

(Signed) DAVID A. CALDWELL.

Sworn to and subscribed before me this 16th day of March, A. D. 1906.

(S. L.) D. S. JONES,
Notary Public.

My commission expires Dec. 14, 1908.

197 STATE OF FLORIDA }
COUNTY OF ST. JOHNS }

Before me appeared C. G. Wakely, who, being duly sworn, says that he is the Superintendent of the Florida East Coast Rilway Co., and that he has held such position between January 1st, 1905, and March, 1905; that he is familiar with the operation of all the trains on said line of railway; that the records of the operations of said trains, including its train sheets, are kept in his office; that the freight trains on the Homestead divison, on which is located Cocoanut Grove station, were operated daily, Sundays excepted, one train in either direction from September 1st, 1905, to March 1st, 1906; that said trains passed Cocoanut Grove practically on time during

these periods, except that once in October and December, once in June, and four times in February, making seven delays out of three hundred and ten trips.

(Signed) C. G. WAKELY.

Sworn to and subscribed before me this 14th day of March, 1906.

THEO. V. POMAR,

(S.L.) *Notary Public, State of Florida.*

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198 STATE OF FLORIDA
COUNTY OF ST. JOHNS

Before me personally appeared Mr. J. P. Beckwith, who, being duly sworn, says that he is the Traffic Manager of the Florida East Coast Railway, that he is familiar with the station at Cocoanut Grove, located on the line of the said Railway; that the business there is conducted in the following manner:

All freight shipped to this station must be prepaid; all freight shipped from this station, when consigned to a regular agency station is forwarded with charges collect, freight forwarded to a non-agency station has to be prepaid and the charges collected by the freight conductor, the freight business at this station being handled by the conductor of the train in lieu of an agent. If the shipper desires to ship freight from this station he must flag the train and get receipt for freight from the conductor; if he expects freight he must also meet the train upon which the freight is expected to come, otherwise the freight is placed in the warehouse by the train hands, where warehouses have been provided.

Cocoanut Grove is a non-agency station, and non-agency stations are established for the benefit of the shipper, in order to avoid his having long hauls from a regular station agency, and the business at this station has been handled in this manner during the year ending June 30th, 1905, and all of the succeeding months of 1905, to the present time, and so far as he is aware there have been no complaints of this manner of handling the business as above outlined.

(Signed) J. P. BECKWITH.

Sworn to and subscribed before me this 14th day of March, 1906.

(S. L.) THEO. V. POMAR.

Notary Public, State of Florida.

199 STATE OF FLORIDA
COUNTY OF ST. JOHN

Before me personally appeared Mr. R. T. Goff, who, being duly sworn, says that he is the General Superintendent of the Florida East Coast Railway Company, that he knows the station facilites in use by this Company at a place called Cocoanut Grove, on this railroad; that there is located at this point a freight warehouse used for the warehousing of freight, size of same being twenty-one feet wide, sixty-four feet long, thirteen feet and six inches high, and that there is a good, wide platform extending all around the said warehouse; that there is eight hundred and eight-seven feet of side track at this station; that this Company has along its line of railroads 220 non-agency stations, called pre-pay stations; some of these non-agency stations are simply for the handling of carload quantities of freight only; that there are also 37 full agency stations; that a full agency station carries with it telegraph service, and that, generally speaking, this is the only privilege enjoyed at an agency station that is not provided at a non-agency station.

Under the present schedule there are two trains each day handling freight which pass this station, one south-bound at 8:22 A. M., and the other north-bound at 2:38 P. M.

(Signed) R. T. GOFF.

Sworn to and subscribed before me this 14th day of March, 1906.

THEO. V. POMAR.
(S.L.) *Notary Public, State of Florida.*

200 Freight business at Cocoanut Grove, with parties whose names appear below for one year ending June 30, 1905.

Freight Forwarded	Name	Freight Received
$60.26	Wm. Archer	
	A. A. Boggs	$6.84
	M. S. Burbank	
	D. S. Brossart	
	T. U. Blizzard	
	Jas Bolton	.50
	E. H. Caraway	
	A. W. Coats	3.88
	Jno. L. Hix	
	F. H. Kanen	
	A. A. Kemp	
	R. . Kelly	
	Kirk Monroe	11.06

	Edw. Pent	
	Jno. Pent	
	I. E. Potter	
	J. S. Pent	
	Jackson Peacock	25.95
	Geo. H. Rabagney	
	Geo. H. Richardson	
	J. S. Richardson	
$38.98	B. C. Tousey	28.35
	A. F. Thomas	
	F. A. Thomas	
	W. J. Shone	7.85

201 STATE OF FLORIDA
COUNTY OF ST. JOHN

Before me personally appeared Mr. W. H. Chambers, who, being duly sworn, says that he is the General Auditor of the Florida East Coast Railway Company, and that his office in St. Augustine, Fla., is the place where all records of shipments for all stations on the Florida East Coast Railway are kept on file, and that the attached statement taken from his records shows the amount of freight received and forwarded by the parties therein named for the year ending June 30, 1905, at the station called Cocoanut Grove, Florida.

(Signed) W. H. CHAMBERS.

Sworn to and subscribed before me this 14th day of March, 1905.

THEO. V. POMAR,
(S.L) *Notary Public, State of Florida.*

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202 TOTAL EARNINGS

Less Betterments and Equipment, for years ending June 30, 1899, to 1905, Inclusive.

1899		1900	
Total earn.	$1,227,311.33	Total Earn.	$1,253,864.98
Total Opr. Exp.	720,042.08	Total Opr. Exp.	822,278.75
Net	$507,269.25	Net	$431,686.23
Int. & Taxes	267,608.18	Int. & Taxes	275,097.33
	$239,661.07		$156,488.90
Less Bett. & Equip.	212,468.04	Less Bet. & Equip.	191,517.03
Net	$27,193.03	Deficit	$35,028.13

1901		1902	
Total Earn.	$1,583,856.41	Total Earn.	$1,936,947.84
Total Opr. Exp.	1,219,615.65	Total Opr. Exp.	1,403,291.64
Net	$364,240.76	Net	$533,656.20
Int. & Taxes	364,147.82	Int. & Taxes	383.963.66
	$92.84		$149,692.54
Less Bet. & Equip.	232,031.20	Less Bet. & Equip.	535,440.64
Deficit	$ 231,938.26	Deficit	$385,748.10

1903		1904	
Total Earn.	$2,018 207.16	Total Earn.	$2,322,572.88
Total Opr. Exp.	1,351,592.78	Total Opr. Exp.	1,501,828.25
Net	$666,614.38	Net	$820,744.63
Int. & Taxes	594,899.43	Int. & Taxes	738,847.40
	$71,714.95		$84,545.87
Less Bet. & Equip.	193,983.21	Less Bet. & Equip.	275,051.09
Deficit	$122,269.26	Deficit	$190,505.22

1905	
Total Earn.	$2,328,863.67
Total Opr. Exp.	1,608,522.53
Net	$720,341.14
Misc. Income	2,332.91
	$722,674.05
Int. & Taxes	243,605.33
	$20,931.28
Less Bet. & Equip.	236,552.11
Deficit	$256,483.39

STATE OF FLORIDA
COUNTY OF ST. JOHNS

Before me personally apeared Mr. W. H. Chambers, who, being duly sworn, says that he is the General Auditor of the Florida East Coast Railway Company, and that his office is in St. Augustine, Fla., and is the place where all records of shipments for all stations on the Florida East Coast Railway are kept on file, and that the attached statement showing the total earnings and operating expenses for the years ending June 30th, 1899 to 1905, inclusive, is true and correct.

(Signed) W. H. CHAMBERS.

Sworn to and subscribed before me this 14th day of March, 1906.

THEO. V. POMAR,
(S.L) *Notary Public, State of Florida.*

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203 STATE OF FLORIDA
COUNTY OF DUVAL

Personally appeared before me, J. N. Whitner, who, being duly sworn, says that he has made an examination of the territory in and around Cocoanut Grove, and also an examination of the signers of the petition to establish a permanent agency at Cocoanut Grove station, on the Florida East Coast Railroad.

Affiant says that an examination of the list of registered voters in the Cocoanut Grove precinct shows that there were only one hundred and fifty-six (156) registered voters at the last election, and not one hundred and ninety-six (196) as stated by Mr. Boggs in his testmony; that this affiant made careful inquiry and ascertained that the petition was carried to a large majority of the male residents in said precinct, and that the large majority declined to sign it, the principal ground of declining being that it was cheaper or just as cheap to haul their freight to and from Miami direct to and from their homes, and more convenient to them than by using the railroad station.

Affiant further says that, as admitted by Mr. Boggs in his testimony, the majority of the residents in and around Cocoanut Grove are north of the station; that of the signers of the petition William Archer and George H. Rabagney are lighthouse men employed on the light-houses near Cocoanut Grove, and are not producers of freight, but work on salaries at the light-houses, and purchase their supplies for individual use only, and as shippers or receivers of freight can amount to but the smallest sum annually; that Edward Pent, John Pent and

J. S. Pent are fishermen and boatmen, who neither ship nor receive any freight; that A. A. Kemp is a fisherman and
204 boat builder, and T. U. Blizzard a fisherman and cooper, who neither ship nor receive any freight; that A. F. Thomas is a laborer working for the Florida East Coast Railway in the yards at Miami; that F. A. Thomas is also a laborer working in the yards of the Company at Miami, and that neither of them ship or receive any freight; that the following: F. H. Kanen, J. E. Potter, J. S. Richardson, and G. H. Richardson are all laborers, who neither ship nor receive freight; that James Bolton's place of business is running a little candy and preserve establishment at the Punch Bowl, near Miami, and closer to Miami than Cocoanut Grove, and neither ships nor receives any freight, with the exception of fifty cents (50c) worth of freight received during the year ending June 30, 1905.- That Kirk Monroe, another of the signers, lives on the bay shore, is a writer, who produces little or nothing for shipment and receives but little; that A. W. Coats is the postmaster at Cocoanut Grove and runs a small store; that he purchases a large part of his stock of groceries at Miami from Baker & Holmes, and hauls by teams from there, and receives some freight by boat from Key West; that Brossart is a boy who neither ships nor receives freight; that John L. Hix, or Hilt, is a laborer, who works on launches, and neither ships nor receives freight.

Affiant further says that Jackson Peacock is a farmer who informed this affiant that he would haul his own and his neighbors' produce to Miami for less than the railroad freight charges, he doing his trading at Miami.

Affiant further says that the only signer of the petition he has been able to find who would be benefited by the proposed permanent agency is B. C. Towsey, who lives a mile and
205 a half west of the station.

Affiant further says that Peacock & Son are relatives of Jackson Peacock, who signed the petition and did not sign the petition; that they are the largest business men in Cocoanut Grove and do the principal business there, their business aggregating more than all the others. These gentlemen purchase a large part of their stock from Baker & Holmes in Miami, and this is hauled by the Montgomery Transfer Co. to them direct to their store, obviating the necessity of hauling to and from the railroad station, and the double transfer necessary, saving additional handling.

Affiant further says that the Montgomery Transfer Company will haul freight to and from Cocoanut Grove and deliver at the homes of the shippers and receivers as cheap as the railroad

charges and cost of transportation to and from the railroad station to the home of the shippers and receivers. Affiant was so informed by one of the Montgomerys. In the case of those who ship from one-fourth of a load and upwards, the Montgomery Transfer Company will take the freight from the packing houses of the shippers; in cases of very small shipments of five or six crates or the like, these are hauled to the stables of the Montgomery Transfer Company. By the Montgomery Transfer Company going to the packing houses of these people, the shippers are saved hauling to the railroad station, from one mile to one and a half miles, and in some instances more.

Affiant further says that mose of these shippers okn teams, and the most of them do their trading at Miami, and find it more convenient to haul to and from themselves, thereby saving the expense of all freight and thus utilzing their teams to advantage.

206 Affiant says there are two roads from the settlement Miami, hard rock roads, which enable two-horse teams to haul 4,000 pounds or more at a load, a full two-horse load of vegetables averaging about 5,000 pounds. Double teams can be hired for $6.00 per day, which can easily make two round trips per day.

Affiant further says from his investigation of the territory and the situation the business of the station would not be materially increased by the establishment of an agency, and that no material increase can be expected until the groves in the vicinity come into bearing.

Affiant further says that the only public road between the station and the settlement requires a hauling of one mile and three-quarters (1¾) from the post office; that there is a private road which meanders to the station; which at the present time runs across lands that have been platted into lots and private property.

Affiant further says that he talked with a great many of the people in the settlement and ascertained that there were so few producing or receiving freight that no material benefit could accrue to the people at large from the establishment of a permanent agency at this point.

Affiant hereto annexes a list of the registered voters in the Cocoanut Grove precinct at the last election, furnished affiant by the Supervisor of Registration, showing that only sixteen (16) of the signers of the petition are registered voters in the precinct.

Affiant further says that of the number signing the petition only five shippers or likely to be. One of these, Mr. Burbanks, has a place of residence and grove decidedly nearer to Miami than Cocoanut Grove. Another, as hereinbefore set

forth, Mr. Jackson Peacock, told affiant that he could haul truck for himself and for his neighbors to Miami cheaper than the railroad charges.

207 Mr. Boggs, one of the signers, is nearer Larkins than Cocoanut Grove. The third is Mr. Coats as hereinbefore stated in this affidavit. Mr. Tousey, as already stated, is the only signer of the petition who would be materially benefited by the proposed permanent agency.

(Signed) J. N. WHITMER.

Sworn to and subscribed before me this 17th day of March, A. D. 1906.

(Signed) H. GAILLARD,

(S.L) *Notary Public.*

My commission expires the 22d day of June, 1909.

Personally appeared before me A. A. Boggs who, being duly sworn, says:

That he is familiar with a certain petition addressed to the Railroad Commission of Florida, and praying that they would order the F. E. C. Ry. Co. to appoint and maintain an agent at their station at Cocoanut Grove. That he wrote said petition himself at the request of many citizens of Cocoanut Grove and, after writing and signing the petition he carried it to the post office, showing it on the way to seevral citizens, all of whom gladly signed it.

That he left the said petition at the post office, in the custody of Charles Frow, who was then in the employ of Mr. Coats the postmaster, with the request that he show it to the people who might come in as opportunity should offer, and ask them to sign.

That subsequently he took the petition out of the custody of the said Frow, and mailed it to the Railroad Commission, and that at no time while the petition was in his possession was it shown to any person who refused to sign.

208 Affiant further says that he has, at various times, spoken to at least 100 citizens of Cocoanut Grove precinct on this subject, and that eevry person with whom he has spoken has expressed himself in terms of warm sympathy with the movement to secure the appointment of an agent at that station. And affiant believes, from his knowledge of the people, that not five persons in the precinct would have refused to sign such a petition if presented to them.

Affiant is informed that the Florida East Coast Railway Company has been in the habit of charging 6 cents more per 100 pounds on various classes of freight, from points north of Miami than the Miami rate, instead of the correct diffierence of 1 cent per 100 pounds, and that many persons have been misled

in calculating the relative advantage of receiving freight at Miami and at Cocoanut Grove by this overcharge.

A. A. BOGGS.

Sworn and subscribed before me this 14th day of April, A. D. 1906.

W. J. SHONE,
Notary Public for the State of Florida.

My commission expires July 13, 1909.

Personally appeared before me Charles Frow, who, being duly sworn, says: That during the month of February last past he was in the employ of Mr. A. W. Coats, in the store which Mr. Coats runs in connection with the post office at Cocoanut Grove, Fla.

That he knows a certain petition addressed to the Florida Railroad Commission and asking them to order the F. E. C. Ry. Co. to appoint an agent at Cocoanut Grove Station.

That said petition was brought to him by Mr. A. A. Boggs with the request that he (Frow) should get some signers for it, as he conveniently could on account of being in the post office.

That he showed the said petition to a number of per-
209 sons, all of whom signed it willingly on request, and that no person at any time refused to sign said petition.

And affiant further says that said petition was not carried to any person while in his custody at said store and post office, and that after securing the signatures he gave the petition back to Mr. Boggs in person.

CHARLES FROW.

Sworn and subscribed to before me this 23rd day of April, A. D. 1906.

W. J. SHONE,
Notary Public for the State of Florida.

My commission expires July 13 1909.

210 St. Augustine, Fla., May 4th, 1906.

Facilities at Cocoanut Grove, station agent, etc.

Mr. R. C. Dunn,
Secty. Fla. R. R. Commission,
Tallahassee, Fla.

Dear Sir:

I have yours without date, "File 2165," received this morning, enclosing copy of order No. 97, in regard to the above, which I have referred to our attorneys.

Yours truly,

(Signed) J. R. PARROTT,
Vice-President.

ORDER NO. 97. RAILROAD COMMISSION OF FLORIDA

In the matter of application of citizens of Cocoanut Grove, Florida, for an order of the Railroad Commission, requiring the establishing of an agency at Cocoanut Grove:

This matter coming on to be heard, after due notice to the Florida East Coast Railway, on the 8th day of March, 1906, and said railway having appeared and been represented and heard, and it appearing from the hearing and investigation made by this Commisson that there is need for the establishment of an agency at Cocoanut Grove, Florida,

It is hereby ordered and adjudged that you, the Florida East Coast Railway, do establish an agency at Cocoanut Grove, Florida, on the line of your road, and that you, the said
211 Florida East Coast Railway, are hereby allowed thirty days from this date to have such agency established.

Done and ordered by the Railroad Commissioners of the State of Florida in session at their office at the City of Tallahassee, Florida, this 30th day of April, A. D. 1906.

(Signed) JEFFN. B. BROWNE, *Chairman.*

Attest: R. G. DUNN, *Secretary.*

212 EXHIBIT "18."

May 9, 1906.

Mr. J. P. Beckwith,
Traffic Manager,
St. Augustine, Fla.

Dear Sir:

The Commissioners are sending you herewith a copy of a communication which has just been received from Mr. J. C. Vertrees of Palatka, which is self explanatory. Is it a fact that your company is charging more than 3c per mile passenger fare between any stations on your line?

Yours truly,

(Signed) R. C. DUNN,
Secretary.

Palatka, Fla., May 7, 1906.

Mr. R. Hudson Burr,
Tallahassee, Fla.

Dear Sir:

For some time past it has been my intention of writing you in regard to the rate charged on the Florida East Coast Railroad. The published passenger tariff is, if I understand it correctly, three cents per mile, but they charge more than this. The distance from Daytona to Palatka is 51 miles and the fare from Daytona to Palatka is $1.55.

Port Orange is just 5 miles south of Daytona and the fare as charged is $1.90, or $1.80 to East Palatka. Now, I
213 merely state the circumstances concerning this one point, as I have just been down there, and have receipts for the fare charged me from Port Orange to Palatka on Saturday last, which I herewith enclose. Furthermore, the agent at Daytona informed me about a month ago, when I made a kick about this same thing, that the rate was lowered to three cents per mile for all points between Jacksonville and Daytona, and the next day I was charged 20c more than the regular fare from Cocoa to Palatka.

I will greatly appreciate it if you will look into this matter and see if the Florida East Coast is conforming to the laws in making these charges. I travel for our firm, and these matters occurring every time I make a trip down that way amounts to quite a little bit in the course of a year.

Another matter I wish to call to your attention is that they do not furnish separate waiting-rooms for the negroes and white people, which I believe is a violation of the law, and last Friday myself and four other gentlemen suffered from it at Titusville, in having to be in the same waiting-room with a crowd of rowdy drunken negroes or wait outside of the room,

which was not at all pleasant, as the time was 2:30 in the morning.

If the Florida East Coast is violating the laws governing such cases, I would like to know why they are allowed to do this any more than any other road.

I notice that you are a candidate for re-election of Railroad Commissioner, and it is my intention of supporting you in the race, as I understand that you always give such matters as these your prompt and personal attention and I trust you will do in this instance.

Thanking you in advance for the information and your attention, I am,

Yours truly,

J. C. VERTREES, JR.

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214 May 25, 1906.

Mr. J. P. Beckwith,
Traffic Manager,
St. Augustine, Fla.

Dear Sir:

The Commissioners are sending you herewith notice of a meeting of the Commissioners, when it is proposed to consider passenger rates of the F. E. C. Ry. Kindly acknowledge receipt.

Yours truly,

(Signed) R. C. DUNN,
Secretary.

RAILROAD COMMISSION, STATE OF FLORIDA.

To the Florida East Coast Railway:

You are hereby notified that there will be a meeting of the Railroad Commissioners of the State of Florida, at their office in the City of Tallahassee, Florida, at 10:00 A. M., on the 7th day of June, A. D. 1906, to consider the advisability of prescribing a three-cent-per-mile passenger rate for use of the Florida East Coast Railway, north of Homestead, Florida.

At this meeting, you, the Florida East Coast Railway, will have an opportunity to be heard and to show cause, if any you have, why the proposed rate should not be adopted.

Done and ordered by the Railroad Commissioners of the State of Florida, in session, at their office, in the City of Tallahassee, Florida, this 24th day of May, A. D. 1906.

JEFFN. B. BROWNE.
Chairman.

Attest:

R. C. DUNN, *Secretary,*

215 Palatka, Fla., May 28, 1906.

Mr. R. C. Dunn, Secy.,
Tallahassee, Fla.

Dear Sir:

Referring to yours of May 26th, File No. 1978, in reply would say that the incident in question was not alone the amount charged by the Conductor, but was the amount that the Agent wanted for a ticket, and I paid the Conductor my fare so as to get a receipt.

I could not get the Agent to give me a receipt other than the ticket purchased.

Yours truly,

(Signed) J. C. VERTREES, JR.

May 26, 1906.

Mr. J. C. Vertrees, Jr.,
Palatka, Fla.

Dear Sir:

Further replying to yours of the 7th inst., I am directed to advise you that the Commissioners are sending you herewith copy of notice which as been served on the F. E. C. Ry., relative to passenger rates. The Commissioners have to advise that they have made a rule which allows conductors to collect 15c more than regular fare from passengers who get on trains at stations where they had an opportunity to purchase tickets but do not do so. The reason for the rule is to make passengers more particular about purchasing tickets before getting on trains.

Yours truly,

(Signed) R. C. DUNN,
Secretary.

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216 RAILROAD COMMISSION, STATE OF FLORIDA.

ORDER NO. 101.

Adoption of Three-Cent Passenger Rate for the Florida East Coast Railway North of Homestead.

Due notice of the proposed adoption of a three-cent-per-mile rate for passenger fares for the Florida East Coast Railway, north of Homestead, Florida, having been given to the Florida East Coast Railway, and the said Florida East Coast Railway being represented by J. P. Beckwith, Traffic Manager, and

Alexander St. Clair-Abrams, Esq., and heard on the subject, and the Railroad Commission being duly advised in the premises.

It is hereby ordered, that the full rate to be charged by the Florida East Coast Railway for the transportation of passengers over its line, north of Homestead, Florida, shall be three cents per mile, and the half rate shall be one and a half cents per mile for each passenger.

It is further ordered, that children under five years of age, when traveling with parents or guardians shall be carried free, and those between the ages of five and twelve, shall be charged half fare.

It is further ordered, that the Florida East Coast Railway shall operate the above-prescribed rates on its line north of Homestead, Florida, from and after July 1st, 1906.

Done and ordered by the Railroad Commisson of the State of Florida, in session, at their office, in the City of Tallahassee, Florida, this 13th day of June, A. D. 1906.

JEFFN. B. BROWNE,
Chairman.

Attest: R. C. DUNN,
Secretary.

217 EXHIBIT "19."

Memorandum showing deduction of freights and increase of car tonnage by Railroad Commission since 1901.

There is no record of the Railroad Commission ever having granted or made an increase in the rate of freight on any commodity.

On September 1st, 1902, the rate on fruit and vegetables was reduced to such an extent as to cut down the revenue from freight traffic about 7 per cent. notwithstanding an increase in production.

April 15th, 1901: Railroad Commissioners issued their Classification No. 1, which reduced ratings on classified tonnage from 8 to 12 per cent approximately.

March 15th, 1902: Fruit and Berry Baskets, carload minimum increased from 10,00 0to 20,000 pounds.

March 15th, 1902: Vegetable Baskets, carload minimum increased from 10,000 to 20,000 pounds.

March 15th, 1902: Furniture, viz: Chairs, Bamboo, Rattan, Reed, Willow; rating reduced 33 per cent.

September 1st, 1902: Fruit and Vegetable rates reduced to such an extent as to reduce revenue from freight traffic about 7 per cent.

March 20th, 1903: Rating for Persimmons reduced from second class to class "V."

December 10th, 1903: Rating for Broom Corn reduced from third to fifth class LCL and from sixth class to class D in carloads.

January 20th, 1904: Joint rates between points in Florida reduced 10 cent.

October 17th, 1904: Sugar cane for planting reduced from third class to class M.

October 17th, 1904: Sugar cane shipped to factories reduced practically 85 per cent.

218 November 15th, 1904: Pineapple Slips or Suckers, carloads 20,000 pounds, reduced from class K to class N.

January 5th, 1905: Agricultural Implements, Nos. CL 20,000 pounds minimum, reduced 33 1-3 per cent.

January 5th, 1905: Blinds, Doors and Frames, carloads 20,000 pounds minimum, reduced 60 per cent.

January 5th, 1905: Earthenware, not Chinaware, Crockery, Jugware or Stoneware, packed or loose, carloads, reduced practically 25 per cent.

January 5th, 1905: Sash and Skylight Frames, glazed or unglazed, carloads 20,000 pounds minimum, reduced 60 per cent.

January 5th, 1905: Stoves and Stove Furniture, carloads 20,000 pounds minimum, reduced 60 per cent.

January 24th, 1905: Flour in sacks, burlapped, reduced from class C to class D.

219

EXHIBIT "20."

The following is a tabulated statement of tickets sold during the twelve months ending April 30th, 1906, at rates in excess of the three cents per mile from between Jacksonville and St. ugustine, and from Palatka to points south and points south showing the total number of passengers and the total amount to Palatka, and across the Ormond and Palm Beach bridges, received from them.

Month	Year	Jacksonville to St. Augustine	St. Augustine to Jacksonville	Palatka to points South	Points South to Palatka
May,	1905	1,108	1,802	285	315
June	"	765	1,201	158	256
July	"	873	982	349	261
Aug.	"	713	884	374	196
Sept.	"	900	837	347	237
Oct.	"	1,215	955	431	200
Nov.	"	1,503	1,009	329	173
Dec.	"	2,098	1,284	412	269
Jan.,	1906	3,507	2,175	590	333
Feb.	"	3,795	3,318	467	381
Mar.	"	4,066	5,674	574	513
April	"	1,995	3,589	248	256
Total		22,538	23,710	4,564	3,390

Figuring the reduction at 15 cents each way on the business between Jacksonville and St. Augustine, and at 20 cents each way between Palatka and points south thereof, the losses would have been as follows:

Jacksonville and St. Augustine, 41,880 one-way tickets at 15c	$6,282.00
Jacksonville and St. Augustine, 4,370 round-trip tickets at 30c	1,311.00
Palatka and South, 7,760 one-way tickets at 20c	1,552.00
Palatka and South, 194 round-trip tickets at 40c	77.60
Total	$9,222.60

220 Over Ormond Bridge and Lake Worth Bridge.

From Ormond			To Ormond		
Month	Passengers	Amount	Month	Passengers	Amount
May, '05	.....	.....	May, '05	...	.....
June "	.....	.....	June, "	...	.....
July "	.....	.....	July "	...	.....
Aug. "	.....	.....	Aug. "	...	.....
Sept. "	.....	.....	Sept. "	...	.....
Oct. "	.....	.....	Oct. "	...	.....
Nov. "	.....	.....	Nov. "	...	.....
Dec. "	.....	.....	Dec. "	...	.....
Jan., '06	326	$114.10	Jan., '06	104	$35.40
Feb. "	409	143.15	Feb. "	229	80.15
Mch. "	610	213.50	Mch. "	291	101.85
Apr. "	2	.70	Apr. "	...	.....
Total	1,347	$471.45	Total	624	$218.40

From Palm Beach			To Palm Beach		
Month	Passengers	Amount	Month	Passengers	Amount
May, '05	...	.....	May, '05	21	5.25
June, "	...	.....	June, "	...	.....
July, "	...	.....	July, "	...	.....
Aug. "	...	.....	Aug. "	...	.....
Sept. "	...	.....	Sept. "	...	.....
Oct. "	...	.....	Oct. "	...	.....
Nov. "	...	.....	Nov. "	...	.....
Apr. "	...	.....	Dec. "	678	169.50
Dec. "	32	8.00	Jan., '06	2,769	692.50
Jan., '06	789	199.50	Feb. "	4,211	1,052.75
Feb. "	2,256	564.00	Mch. "	3,876	969.00
Mch. "	3,923	980.75	Apr. "	445	111.25
Total ...	7,009	$1,752.25	Total ...	12,000	$3,000.00

221 ANSWER OF RAILROAD COMMISSIONERS OF FLORIDA.

In the Circuit Court of the United States for the Southern District of Florida.

IN CHANCERY.

The Trust Company of America, a Corporation, etc.,
vs.
Florida East Coast Railway Company, a Corporation, etc.; Newton Blitch, R. Hudson Burr, and John L. Morgan, as Railroad Commissioners of the State of Florida; William H. Ellis, Attorney General; Augustus G. Hartridge, State Attorney for the Fourth Judicial Circuit of Florida; Augustus V. Long, State Attorney for the Eighth Judicial Circuit of Florida, and John C. Jones, State Attorney for the Seventh Circuit of Florida.

BILL FOR INJUNCTION, RELIEF, ETC.

The joint and several answers of R. Hudson Burr, John L. Morgan and Newton A. Blitch, as Railroad Commissioners of the State of Florida, to the amended bill of complaint of The Trust Company of America.

These defendants, for answer to the said bill, or to so much of it as they are advised it is necessary or material for them to answer, say:

2 CITIZENSHIP AND RESIDENCE OF COMPLAINANT.

1. These defendants have no knowledge nor belief whether the complainant is a corporation, nor, if it be a corporation, whether it is chartered and created by the laws of the State of New York, nor where it has its principal office and place of business, if any, and require strict proof of the allegations of the bill in these respects.

CITIZENSHIP AND RESIDENCE OF DEFENDANTS.

2. These defendants admit that the defendant, the Florida East Coast Railway Company, is a corporation duly chartered and existing by and under the laws of the State of Florida, and that it has a line of railroad wholly within the State of Florida, that it has a line of railroad wholly within the State of Florida, and doing business in said State; and that they are each and every one of them Railroad Commissioners of the State of Florida, and that each of them is a citizen and resident of the said State.

CHARTERED AUTHORITY OF COMPLAINANT.

3. These defendants have no knowledge nor belief what, if any, corporate authority and power the complainant is invested with, and require strict proof of the allegations of the bill in this respect.

3 CORPORATE LAWS OF FLORIDA.

4. These defendants are advised that the allegations of the bill under this division are pure matters of law, to which it is unnecessary for them to make answer.

CHARTERED RIGHTS OF FLORIDA EAST COAST RAILWAY COMPANY.

5. These defendants admit that in the year 1892 a charter was granted under the laws of the State of Florida to John Bushnell, George W. Cotton, George Cheseboro, W. A. Harris and L. B. Dryer, who made and signed Articles of Association incorporating the Florida Coast and Gulf Railway Company, to construct and operate a railroad as alleged in the bill, and that a certificate of incorporation was issued as alleged in the bill. And also that in the month of October, 1892, the name of the corporation was changed to Jacksonville, St. Augustine and Indian River Railway Company, as alleged in the bill, and also that in September, 1895, the name of the corporation was again changed to Florida East Coast Railway Company, as alleged in bill, and that the copies annexed to the bill as Exhibit 1 are true copies of the certificate and the letters patent which issued to said railway company.

4 ROADS MERGED IN AND CONSOLIDATED WITH.

These defendants have no knowledge nor belief as to the several conveyances and other means set forth in this division of the bill by which the complainant claims that the Florida East Coast Railway Company became invested with the titles to the several properties set forth therein, and they require strict proof of the same.

THE COMPLETED LINE OF RAILWAY.

These defendants admit that the Florida East Coast Railway in some manner became possessed of and now operates the following lines of railroad, which were already constructed and in operation:

A line from a point on the St. Johns River, opposite Jacksonville to St. Augustine.

A line from East Palatka to St. Augustine.

A line from East Palatka to Daytona.

A line from New Smyrna to Orange City Junction.

A line from Titusville to Enterprise.

A line from a point on the St. Johns River, opposite Jacksonville to Pablo Beach and as to the remainder of said
5 lines set forth in the bill in this connection, they have no knowledge and have formed no belief whether the remainder of said lines was already in operation or was constructed by the Florida East Coast Railway Company. They admit also that the line from Jacksonville to Daytona via East Palatka now forms a part of the main track of the said railway, and that the other roads named in this connection in the bill are operated as branches thereof.

And these defendants admit that under its Articles of Incorporation the Florida East Coast Railway Company was authorized and empowered to build, construct and operate a line of railroad from the City of Jacksonville in the County of Duval, to Miami in Dade County; but whether the said railway company proceeded to rebuild the lines of railroad from Jacksonville to St. Augustine, from Palatka to St. Augustine, from Palatka to Daytona, and from Daytona south (which last expression in this connection is unintelligible to these defendants) they have no knowledge nor belief, and require strict proof thereof. but they admit that the said railway company has furnished new equipment for the same; and they admit that the said Florida East Coast Railway Company graded, tied, and otherwise constructed and equipped a line of railroad from Daytona to the City of Miami,

and they admit all the mileage averred in this division of the bill.

6 And these defendants further admit that the Florida East Coast Railway Company controls and operates the lines of railroad described in subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (j), and (k) of this division of the bill. They also admit that the line of railroad was extended, as averred in the mbill, from Pablo Beach to Mayport and that the Florida East Coast Railway Company runs its trains from Enterprise or Enterprise Junction over the tracks of the Atlantic Coast Line Railroad Company to Sanford under some arrangement with the latter railroad company.

VESTED RIGHTS TO CHARGE FIVE CENTS PER MILE FOR PASSENGER FARES.

These defendants are advised that the allegations contained in this division of the bill are pure matters of law, which it is not necessary for them to answer.

RAILROAD COMMISSIONERS.

These defendants admit tha tthey are the Railroad Commissioners of the State of Florida; and they say they are advised that it is not material for them to answer the other allegations of this division of the bill.

POWER OF RAILROAD COMMISSIONERS.

These defendants are advised that the allegations contained in this division of the bill are pure matters of law, which it is not necessary nor material for them to answer.

PENALTIES AUTHORIZED.

These defendants are advised that the allegations contained in this subdvision are pure matters of law, which it is not necessary for them to answer.

MORTGAGES TO COMPLAINANT.

These defendants have no knowledge nor belief as to the execution of the alleged first mortgage dated September 1, 1897, an alleged copy of which is annexed to the bill as Exhibit 2, nor its amount nor the property on which it is secured, nor as to the execution of the alleged second mortgage, dated October 1, 1902, an alleged copy of which is annexed to the bill as

Exhibit 3, nor its amount, nor the amount of alleged bonds issued under it, nor the property on which it is secured, and they require strict proof of all the allegations of the bill contained in this division. These defendants say, however, that the allegations of this division of the bill correspond with the
8 last Annual Report made by the Railway Company defendant to them as Railroad Commissioners, but from circumstances hereinafter alleged they predicate no knowledge or belief on said report.

RIGHTS OF COMPLAINANT UNDER SAID MORTGAGES.

These defendants have no knowledge nor belief respecting the acceptance of the complainant of the said alleged trusts, nor of its duties thereunder, nor whether the complainant has been requested by the owners and holders of a majority of the said alleged bonds to take such steps as may be necessary for the protection and safety of the trust reposed in it as set forth in the bill, and they require strict proof of all the allegations contained in this division of the bill, and they say that, supposing the complainant to be invested with trusts as alleged in the bill, the filing of the said bill was wholly unnecessary for the protection and safety of such trusts.

LIABILITIES OF THE FLORIDA EAST COAST RAILWAY COMPANY.

These defendants have no knowledge nor belief as to the table of liabilities set forth in this division of the bill, except that the authorized capital stock of the Florida East
9 Coast Railway Company is $1,000 000, nor as to the rate or aggregate amount of interest on the alleged outstanding bonds, and the alleged unsecured indebtedness; and they require strict proof of the allegations of this division of the bill in these particulars. They further say that in general the allegations of this division of the bill correspond with the report aforesaid, except as to the unfunded debt.

PRESENT VALUE OF PROPERTY.

And these defendants deny that the alleged liabilities of the Florida East Coast Railway Company are reasonable liabilities; they deny that the road could not be constructed and its property replaced and its equipment supplied at the time for $16,297,508; they deny that a fair estimate of the cost of reproduction of the property of the said railway company is over

$17,000,000, and say that the last two estimates are grossly excessive, and also that they have no knowledge or belief as to what the plant account of the said railway company shows, nor whether it is accurate, and in these particulars, so far as is material, they require strict proof; and likewise inasmuch as they have no knowledge or belief in respect thereto, they require strict proof that the alleged capitalization and the liabilities, if they exist, are only in the line of railroad from Jacksonville to Miami and the branches thereof. And they further say that, if the said railway was constructed at the cost alleged, it was constructed in an extravagant or unnecessarily expensive manner.

ASSESSMENT FOR TAXATION.

These defendants deny that the assessed valuation of the property of the Florida East Coast Railway Company for taxes is next to the Louisville and Nashville Railroad Company, the highest assessed valuation of any railroads in the State of Florida, and they say that the main branch and side tracks, with switches and rolling stock of the Atlantic Coast Line Railroad Company in the State of Florida were assessed for the year 1906 at $8,944,351.00; those of the Seaboard Air Line Railway at $6,176,107.00; those of the Florida East Coast Railway Company at $4,044,860.00, and those of the Louisville and Nashville Railroad Company at $2,145,392, which valuations are exclusive of other real and personal property assessed by the County Assessors, but these defendants say that the aggregate assessed valuation of these other classes of property of the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railway, respectively, is greater than the assessed valuation of the like property of the Florida East Coast Railway Company. And these defendants deny that the assessed valuation of the last-mentioned railway company is equal to or higher than the average rate of assessed valuation in the State of Florida; they deny that the average rate of assessed valuation of real property in this State ranges from 25 per cent to 35 per cept of its actual cost or selling value, and they say that the law of the State of Florida requires all assessments for taxation to be made at the full cash value of the property. They deny that the assessment of the personal property of the Florida East Coast Railway Company is largely in excess of the average assessment on personal property in the State, and they deny that the said Railroad Company, if the valuations of its property as stated in the bill for the purpose of rate making are correct pays its full proportion of taxes in the

State of Florida in accordance with the system and rate of valuation for taxes. As to the increase of taxes in the year 1905, these defendants have no knowledge nor belief. And these defendants say that in the return of the same railway company for taxation as of January 1, 1906, filed with the Comptroller of the State prior to the filing of the bill in this cause,
12 the value of the trackage was returned at $2 345,920, and of the rolling stock in detail aggregating $665,050, making a total valuation of $3,010,970, which return was verified by the oath of J. R. Parrott, Vice-President and General Manager, taken April 25th, 1906, that it was a full and correct statement of the value of all property belonging to the Florida East Coast Railway Company which was required by Section 47 of Chapter 4322, Laws of Florida, amended in 1897, to be returned to the Comptroller of the State.

A REASONABLE RATE OF INTEREST.

These defendants have no knowledge nor belief as to whether 5 per cent is or is not an unreasonable rate of interest on the bonds alleged to have been issued by the said railway company, because they are not informed of the circumstances under which said bonds were issued; they admit that the legal rate of interest in this State is 8 per cent per annum, if the rate be not otherwise expressed; that the ordinary rate of interest in the banks of the State varies from 8 per cent to 10 per cent, though loans on good security can sometimes be obtained at * per cent; and they say that the rate of interest on mortgages of real estate varies from 6 per cent to 10 per cent.

13 RIGHT TO EARN A REASONABLE PROFIT.

These defendants admit that if the said railway company were permitted to charge rates without restriction, it could and would earn its fixed charges, and they say in addition that it would make very large returns upon the investment, but they also say that such unrestricted liberty would result in great damage and injury to the people of the State of Florida, and to the public generally, especially to those living along the line of the said railway and those doing business therewith, and would prevent and retard the development and prosperity of the State, especially the Eastern portion thereof, over which the said railway company maintained an almost complete monopoly, and they say that the said railway company can earn reasonable return on the enterprise under all the restrictions and orders of which the bill complains.

CAPITALIZATION AND DIVIDENDS.

These defendants say that they can neither admit nor deny the capitalization of the Atlantic Coast Line Railroad Company for its line South of Savannah, as alleged in the bill at $32,519.00 per mile, nor of the Louisville and Nashville Railroad Company for its entre line, including its Florida roads,
14 at $49 902 per mile, nor of the Seaboard Air Line Railway in Florida at $48,553.00, but they say that according to the report of the Louisville and Nashville Railroad Company for its entire line, including its Florida roads Florida lines was on June 30, 1906, as follows: The Pensacola and Atlantis division, $9 491.00 per mile, and the Pensacola division, $8,040.00 per mile, and they further say that the reports of the Atlantic Coast Line Railroad Company to them embrace 4,204 miles of track in the State of Florida, Alabama, Georgia, South Carolina, North Carolina and Virginia, and do not separate its mileage in Florida, and the indebtedness there, from its mileage and indebtedness of the whole system, and so likewise of the Seaboard Air Line Railway. And as to the capitalization of the Florida East Coast Railway Company, these defendants say that, according to the capital liabilities and mileage of said company as stated in the bill, is $32,392 per mile, instead of $29,405.00, as stated in the bill, and in this connection these defendants say that all of the said capitalizations as stated in the bill are grossly excessiev and afford no basis on which the said railroad companies should be permitted to receive returns.

These defendants, further answering say that they believe
15 that no dividends are declared on the outstanding stock of the Florida East Coast Railway Company, and none on the stock of the Seaboard Air Line Railway but they deny that the Florida East Coast Railway Company does not earn a reasonable profit on its capital stock. They further say that the Atlantic Coast Line Railroad Company pays a dividend on its common stock of 6 per cent and on its preferred stock of 5 per cent, and that they have no knowledge of the dividend if any, paid by the Louisville and Nashville Railroad Company.

NECESSITY FOR SURPLUS.

The defendants say that there is no greater necessity for a surplus for the successful operation of a railroad in this State than exists in the United States generally, and that the matter of a surplus as alleged in the bill is a mere matter of the method of keeping accounts, and they deny that under the rates and

regulations prescribed by the Railroad Commission of Florida the said Florida East Coast Railway Company cannot earn sufficient to make all reasonable purchases of rolling stock and equipment to meet unexpected contingencies and to establish a sinking fund, but they do not admit hereby that a sinking fund is a proper element to be considered in the making of rates.

16 EXPENSES, EARNINGS AND DEFICIT.

These defendants deny that in each and every of the fiscal years ending June 30, 1894, 1895, 1896, 1897, 1898, 1900, 1901, 1902, 1903, 1904, 1905 and 1906, there was a deficit in income of the Florida East Coast Railway Company over the proper operating expenses, taxes and interest, and they deny the statements of deficits made in this division of the bill. They deny that the Florida East Coast Railway Company has or ever had, either through itself or any merged Company, a vested right to charge passenger rates to the maximum of five cents per mile. They admit that after the establishment of the Railroad Commission, the then Railroad Commissioners put into force on November 1, 1897, a rate not exceeding four cents per mile on the Florida East Coast Railway, and they say that such was the general rate charged by said railway at the time of the order. And the defendants say that under the rate so established at four cents per mile the average cost of transporting passengers on the line of said road under proper, careful and reasonable management ought not to have exceeded the average receipts and that they do not believe that said cost did exceed said receipts, but that in any event such excess of cost would be immaterial if the total net income of the
17 said Company yielded a reasonable return as these defendants say that it ought, and believe that it did. And they admit that in December, 1902, the said railway company made a further reduction to three cents per mile, except between Jacksonville and St. Augustine, where the rate was made $1.25 per capita, or fifteen cents more than the three-cent rate, and at other points as hereafter in the answer stated. But they say that the said further reduction was made by said railway company because said company feared that the railroad commissioners would order a three-cent rate on its road and desired to anticipate their action.

And they say that they do not know why the arbitrary rate of fifteen cents overcharge from Jacksonville to St. Augustine is made, but deny that the said railway company had any right to maintain it, as against the order of the Commissioners on

account of bridge charges as alleged in the bill, and likewise the arbitrary rate which in many instances amounts to more than twenty cents to points south of Palatka is not justified as against the order of the Railroad Commissioners by competition to Palatka, as alleged in the bill.

And these defendants admit that the said railway company operates its branch road across Lake Worth, as alleged
18 in the bill, but they have no knowledge nor belief as to the expense of maintaining the bridge and trestle, which they admit were built to transport tourists from the west side of the lake to the winter hotels between Lake Worth and the Atlantic Ocean, and to benefit and accommodate the two large hotels, which were built and are still owned by the railway company or its owners or owner. They say that the charge for conveying passengers on the said branch is twenty-five cents, the charge being left blank in the bill. They also admit that the said railway company operates a spur or branch at Ormond to the Hotel Ormond, which is also owned by the said Railway company or its owners or owner, and that it makes a special charge, the amount of which is left blank in the bill. They further admit that these spurs are operated only from December to May, and they say that they have no knowledge of the earnings on said spurs in excess of fifteen cents per mile between Jacksonville and St. Augustine, and from Palatka to points south, as alleged in the bills, and no belief concerning the same except that there is an enormous amount of passenger travel over the said parts of the said railway during the said months, and they require strict proof of the allegations of the bill in this respect. And these defendants say that the said railway company, when it made the reduction to an
19 alleged three-cent per mile rate, notified the Railroad Commissioners of the State of Florida of the reduction; and they say that the said railway company at the time proclaimed to the public generally that it was making a Christmas present to them of a three-cent rate. They admit that there has been a continued increase in the number of passengers conveyed over said railway, and an increase in the aggregate sum received from passenger fares, and that some of said increase is due to the advertising of the said railway or of the hotels controlled by it or its owners; they say, however, that every one of the said hotels referred to in the bill was built and in full operation before the reduction to the three-cent rate and also that the local travel has largely increased by reason of the settlement and building up of the country through which the said railway passes; and they further say that if there has been an apparent loss on the passenger traffic it has been due to unwarranted expenditures or bad management, or that an im-

proper method of accounts has been adopted. And these defendants say that they have no knowledge or belief concerning the total of earnings from passenger traffic alleged in this division of the bill for the fiscal year ending June 30, 1900, 1901, 1902, 1903, 1904, 1905, and 1906 and require strict
20 proof that the same is a correct statement. They say that the aggregates given therein tally in the main with those contained in the reports of the said railway company to the Railroad Commissioners, but under the circumstances of this suit they are not disposed to base knowledge or belief thereon; they deny that there has been any loss to the said railway company in transporting passengers at the alleged rate of three cents per mile unless as the result of extravagance or bad management, though such loss, if it existed would be immaterial if the total net income of the company yielded a fair return. And these defendants say that they have no knowledge or belief covering the correctness of the detailed statements of receipts and expenditures attached to the bill as Exhibit 5, and require strict proof of the same, and say that in any event a reasonable rate must be based on the condition of the company at the time of filing the bill, and not based on an average, including years when the said company was not operating one-half of its present mileage.

PRINCIPAL RAILROADS OF FLORIDA.

These defendants deny the allegations of the bill that the Railroad Commissioners in making passenger rates required the several roads to make a rate not exceeding three
21 cents per mile, if by the "several roads" the complainant means the Atlantic Coast Line Railroad Company the Seaboard Air Line Railway, the Florida East Coast Railway Company, and the Louisville & Nashville Railroad Company. They say, as they have already said that the Florida East Coast Railway Company, in 1902, fearing that the Railroad Commissioners might take up the subject of a three cent per mile rate, as the public was demanding that it should be taken up, anticipated any action of the said Railroad Commissioners by announcing that it made the reduction to three cents per mile; wherefore the Seaboard Air Line Railway voluntarily reduced its passenger rates to three cents per mile in order that no discrimination might exist against travel to resorts reached by it in parts of the State other than the East Coast, and to meet the competition for business. To meet the reduction by the Seaboard Air Line Railway, the Atlantic Coast Line Railroad Company reduced its rate to the same three-cent

rate to all points at which it was in competition with the Seaboard Air Line Railway, and afterwards consented to an order of the Railroad Commissioners to a similar rate throughout its main lines. An order for a three-cent rate was made on the Louisville and Nashville Railroad Company, which that
22 Company refused to obey, and which is now the subject of litigation between that Company and these defendants in the Circuit Court of the United States for the Northern District of Florida. And they further say that it was only when they found that the arbitrary changes aforesaid over the voluntary rate of three cents per mile were made by the Florida East Coast Railway Company, the Railroad Commissioners made an order on that Company for a three cent per mile rate for the purpose of making a uniform passenger rate throughout its lines north of Homestead and doing away with the arbitraries. And they deny that in making rates as aforesaid they have done so without regard to the condition of the several roads, but have considered what was just to the said roads and to the public, and they believe that in each of the said instances where they have made such rates, the same are fair and just to the railroad and the public.

They admit that there are four separate railroad corporations opening lines of railroad in the State of Florida, whose business constitutes about 90 per cent of the entire railroad business in the State, but they say that the mileage of said roads is about 81 per cent of the entire railroad mileage in the State and they admit that the allegations of subdivisions 1, 2, 3 and 4 of this division of the bill are substantially true, also
23 that the Florida East Coast Railway is the only one of the four operating exclusively within the State of Florida, but they say that this railway enjoys a monopoly of passenger and freight traffic for over 400 miles of its lines through a prosperous section of the State, which monopoly it carefully guards; that it has valuable connections at Jacksonville with the Atlantic Coast Line Railroad, the Seaboard Air Line Railway, the Southern Railway, the Georgia Southern and Florida Railway, and the Clyde Steamship Company, all of which are large interstate carriers, and has valuable connections at Miami with steamship lines to Nassau, N. P., Key West and Havana.

And these defendants say that it is immaterial whether or not other lines af railway were better able to carry passengers at the rate of three cents per mile, provided such rate is just and reasonable to the said Florida East Coast Railway Company and to the public, and that they have no knowledge or belief, apart from the reports of said railway company, whether its passenger earnings exceed its freight earnings or not.

PASSENGER AND FREIGHT EARNINGS.

These defendants say that the tabulation of passenger and freight earnings of the four principal railroads as set
24 forth in the bill corresponds with the reports of said railroads to the railroad commissioners, but further than that, they have no knowledge on the subject, and require strict proof thereof, and so they answer to Exhibit No. 6, annexed to the bill.

POPULATION TO THE MILE.

These defendants say that the three cent per mile rate is just to the Florida East Coast Railway Company and to the public, and that, for the purposes of this case, it is immaterial whether or not the same rate is more profitable to the other railroads. They admit that the statement in this division of the bill as to the mileage and the operation of trains and the competitive points is in the main correct.

COMPARATIVE POPULATION.

These defendants deny the amount of population and the population per mile assigned to the four railroads mentioned in this division of the bill, and they deny the correctness of Exhibit No. 7 annexed to the bill, and they present herewith a statement of the population of the State in 1900 and 1905, prepared by the Commissioner of Agriculture of the State of Florida, which is as follows (See next page.):

Table No. 3—Area and Population of Florida by Counties,
25 1905 and 1906.

Counties.	Land Surf. in sq. miles.	1905	1905	1905	1900
Alachua	1,283	13,598	20,409	34,007	32,245
Baker	585	3,062	818	3,880	4,516
Bradford	552	9,124	3,819	12,943	10,295
Bhevard	1,156	3,060	1,288	4,348	5,158
Calhoun	1,067	4,238	1,558	5,796	5,132
Citrus	612	3,228	4,315	7,543	5,391
Clay	622	3,244	2,240	5,484	5,635
Columbia	792	8,638	11,275	19,913	17,094
DeSoto	4,424	7,880	4,181"	12,089	4,955
Duval	3,755	10,817	1,629	12,446	8,047
Escambia	822	20,899	26,987'	47,912	39,733
Franklin	668	18,213	14,166"	32,383	28,313
Gadsden	731	2,492	2,143	4,635	4,890
Hamilton	500	5,661	10,848'	16,511	15,294

	508	5,702	4,219	9,921	11,881
Hernando	475	1,791	2,249	4,040	3,638
Hillsborough ..	1,309	40,626	10,757'	51,416	36,013
Holmes	435	7,813	1,214	9,027	7,762
Jackson	963	12,564	14,246'	26,824	23,377
Jefferson..	593	3,095	10,035	13,130	16,195
26 Lafayette	1,202	4,793	1,130	5,923	4,987
Lake	1,128	4,665	2,850	7,515	7,467
Lee	4,641	3,561	399'	3,961	2,925
Leon	730	3,984	14,880'	18,883	19,887
Levy	1,133	5,071	4,209	9,280	8,603
Liberty	725	1,508	1,327	2,835	2,956
Madison	693	6,824	9,328	16,152	15,446
Manatee	1,275	6,537	1,993	8,530	4,663
Marion	1,640	9,814	16,905'	26,725	24,403
Monroe	1,125	14,273	6,673'	20,973	18,006
Nassua	645	5,334	5,678	11,012	9,654
Orange	1,315	8,076	5,501"	13,591	11,374
Osceola	1,827	3,130	492	3,622	3,444
Pasco	750	4,012	2,008	6,100	6,054
Polk	1,967	12,856	5,007	17,863	12,472
Putnam	772	6,096	5,092'	11,192	11,641
St. Johns	960	6,527	4,476	11,003	9,165
St. Lucie	1,260	2,441	583	3,024	
Santa Rosa	1,528	8,502	3,299	11,801	10,293
Sumter	599	3,518	2,031	5,549	6,187
Suwanne	680	9,619	8,392	18,011	14,554
27 Taylor ...	1,100	4,171	1,410	5,581	3,999
Volusia ..	1,281	7,267	4,813"	12,083	10,003
Wakulla	601	2,637	2,570	5,207	5,149
Walton	1,384	9,425	2,844	12,296	9,346
Washington ...	1,425	8,537	3,371	11,908	10,154
Total	54,240	348,923	265,737"	614,845	528,542

And they further say that little can be predicated on any estimate of comparative population which may be based on the said table of population, because of the difference in the location of railroads in the respective counties, the differences in competition, the differences between the counties in the proportion of white and colored population, and the difference in the traveling habits of the people in the different portions of the State.

LAND GRANTS.

These defendants admit that the Jacksonville, St. Augustine and Halifax River Railway Company secured 56 782
28 acres of land from the State; also that the St. Johns &

Halifax River Railway secured 110,398 acres of land from the State; also that the St. Augustine & Palatka Railway Company secured 41,510 acres of land from the State, and also that the St. Johns Railway Company secured 42,315 acres of land from the State. And they say further that the Blue Springs, Orange City & Atlantic Railroad Company, which built the line now operated by the railway company defendant as its New Smyrna and Orange City branch, secured from the State 118,498 acres of land, and that the Jacksonville & Atlantic Railroad now operated by the defendant railway company as its Mayport branch secured from the State 21,501 acres of land, and that all these land grants were made by the State to assist in constructing said railroads to the total of 391,004 acres. And these defendants say that they have no knowledge nor belief as to conveyances of said lands made before the acquisitions of these roads by the railway company defendant nor as to what has been secured by said Company from said lands nor whether said lands or any of them have been acquired by said Company. They admit that the Florida East Coast Railway Company has not directly received any conveyance of lands from the State, and they say that a fair amount should be deducted from the cost of construc-
29 tion of said railway on account of the land grants aforesaid.

PASSENGER EARNINGS.

These defendants say that there is a good amount of travel on the part of the resident population over the lines of the Florida East Coast Railway, though of course the travel in the tourist season is much heavier than during the other months, as is the case on all the main lines of railroad extending through the peninsula of Florida, and they say that the amount of travel over the Florida East Coast Railway during the winter and spring months is enormous, though whether 80% of the passenger business during the tourist season is from outside tourists these defendants cannot say, for want of knowledge or belief; they admit that some of them only are persons of large means and suppose that they demand first-class accommodations, if they pay for first-class tickets. They deny that the resident travel throughout the year is quite small, and say that even in summer the passenger trains carry a fair number of passengers. What proportion the average monthly receipts bear to the same in the tourist season these defendants have no knowledge nor belief, and so they say as to the passen-
ger earnings of the Mayport branch and to Exhibits 8
30 and 9 and require strict proof to be made of the same.

And these defendants say likewise that they have no knowledge nor belief as to how many laborers paid their fare as alleged in the bill, but they say that the increase of business was due in part to the increased prosperity and settlement of the country tributary to said railway, and as to the Mayport branch they say, as they said before, that they have no knowledge or belief with respect thereto.

They also say that they have no knowledge or belief concerning Exhibit No. 19 and require strict proof thereof.

MAYPORT BRANCH.

The defendants admit that this branch runs from Jacksonville to Pablo and Atlantic Beach and thence to Mayport; they are not informed whether it is practicably a passenger line and have no knowledge or belief on the subject, though they say that it carries a large number of passengers at certain seasons and on certain occasions; they admit that the resident population outside of Jacksonville and South Jacksonville is small, but they know nothing concerning the traffic in freight nor how the earnings of the branch are divided between passenger and freight. They do not know what proportion of the passengers come from Jacksonville nor what percentage of the entire passenger traffic the local traffic is. They deny that most of the passengers are persons of very limited means, simply going on excursions, and say that many of the passengers are persons of means going to the magnificent hotel at Atlantic Beach called the "Continental" and to other hotels in the vicinity of Pablo Beach, and they say it is not absolutely necessary to reduce the rate per passenger per mile, including parlor car earnings to 1½ cents, and that the said road would not lose four-fifths of the present earnings if the rate were more; that the regular rate on that branch is about 2½ cents per mile, and that as to the statement of earnings of said branch they have no knowledge or belief and require strict proof with respect thereto. And they admit that the owners or owner of the said railway company defendant have built a large hotel at Atlantic Beach and say that in the summer said hotel is a favorite resort for persons of means from Florida, Alabama and Georgia, but whether it is run and the said branch railroad is run at a loss these defendants do not know and have no belief on the subject further than the belief that prudence would dictate the closing out of a losing enterprise. And they have no knowledge nor belief as to Exhibit 11 and require strict proof thereof.

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RECEIPTS AND AVERAGE COST CARRYING PASSENGER PER MILE.

These defendants deny that there is any loss in carrying passengers as alleged in this division of the bill, and likewise the correctness of the statement of cost and loss therein contained, and a loss for the fiscal year ending June 30, 1906, which amounted to $75,776.33, but they say if said losses be as claimed they are due to mismanagement of the said railway company, and they further say that compensation made for mail and express matter carried on passenger trains should be credited to the passenger service. The say that the so-called experiment of reducing the rate for four to three cents per mile is not a real failure, and if aparently so, it is due to mismanagement of said Company or an improper method of accounting. They have no knowledge nor belief whether there would have been the same increase of travel at four cents per mile as there was at the rate of three certs per mile and demand strict proof of the same. They deny that the maximum rate of four cents per mile can be maintained without injury to the public and without affecting in the slightest degree the prosperity or development of the State of Florida. As to the receipts from parlor and sleeping cars and Exhibit 12 these defend-
33 ants have no knowledge nor belief and require strict proof thereof.

AVERAGE RECEIPTS ON MAYPORT BRANCH

These defendants say they have no knowledge nor belief as to the allegations of this division of the bill, including Exhibits No. 13 and 14 and require strict proof of the same.

ACTUAL LOSS CARRYING PASSENGERS.

These defendants deny, as they have heretofore denied, that there is any loss in carrying passengers on the said railway, except as the result of mismanagement, and they deny the allegations of this division of the bill.

FREIGHT TONNAGE ON DIFFERENT ROADS.

These defendants say that they have no knowledge nor belief concerning the statements of tonnage contained in this division of the bill and Exhibit No. 15, and no information concerning the same except from the reports made tothem by the seevral railroad companies, and they require strict proof of the allegations of this division of the bill.

34 INCREASE IN FREIGHT RATES IMPRACTICABLE.

These defendants deny that any of the freight schedules prescribed by the Railroad Commissioners for said railway company are unreasonably and unjustly low and say that it would be inadvisable to require a general increase of freight rates because those in force on said railway are in general higher than those on any other long line in this state, and they say that there would be greater encouragement to fruit growers along the line of said railway, if the railway company did not discriminate in freight rates against the products of Florida in favor of those of the West India Islands, particularly Cuba. And they deny every other allegation of this division of the bill.

COMPARATIVE TONNAGE OF DIFFERENT ROADS.

These defendants say that they have no knowledge nor belief concerning the allegations of this division of the bill, and no information concerning the same except from the reports made to them by the several railroad companies, and they require strict proof of the allegations of this division of the bill.

35 LIMITATIONS OF FREIGHT.

These defendants deny each and every one of the allegations of this division of the bill.

ROAD ECONOMICALLY CONDUCTED.

These defendants deny that the said railway company is economically conducted, and every other allegation of this division of the bill.

AGENCIES.

These defendants are advised that it is unnecessary and immaterial for them to answer the allegations of this division of the bill, as no charge is made that they have ordered any resident agent at any points other than at Cocoanut Grove, and they have no desire to require any resident agencies except such as shall be just to the public and the railway company, and they respectfully submit that they cannot be enjoined prior to any order by them entered and made.

AN UNREASONABLE AND UNJUST ORDER.

These defendants admit that there is a place on the line of the railway company defendant about five miles south of Miami known as Cocoanut Grove, where the said railway company established a non-agency station; they have no knowledge of the gross earnings of that station except as stated by the
36 railway company; they admit that a petition was addressed to them for an order requiring the said railway company to maintain an agency there; that there was a hearing, at which both parties to the matter appeared, and were heard, including the Florida East Coast Railway Company, by the Solicitor who filed this bill, and were fully heard and that the said railway company made the claim alleged in the bill. But they say it appeared to the Commissioners, and they so found, that there was tributary to Cocoanut Grove a community of 900 to 1,000 people engaged in the production of fruit and vegetables, that much of the freight to and from said community was handled in wagons to and from Miami, and that the business at said station would be increasel by the establishment of an agent, and believing, as they still believe, that justice to that community required the establishment of an agency there, and that notwithstanding any possible loss there from the Florida East Coast Railway Company, said company would still be able to make a reasonable return on its enterprise; they made the order complained of in the bill, and they say that such order is reasonable and just and they deny that it will create any deficit in the finances of said company.

37 BUSINESS AT COCOANUT GROVE.

These defendants have no knowledge nor belief of the facts stated in this division of the bill, other than the statement of the Florida East Coast Railway Company, and require strict proof thereof; but they say that they had ample authority to order the establishment of said agency station, and that by reason thereof the property of the said railway company was not taken without due process of law; that there is or ought to be no real deficit in the finances of said company; that its solvency is or ought to be in no wise affected.

REDUCTION ON LUMBER RATES.

These defendants admit, that in May, 1905, they made an order reducing the freight on lumber on a number of railroads in the State, but they deny it involves a loss of $37,000 per

annum to the railway company defendant, and say that the order was reasonable and just. They admit that they were enjoined by other railroads for enforcing said order, and that said injunction suits are still pending, and that they therefore suspended, but did not revoke the said order, and that if permitted they will enforce the same. As to Exhibit No. 19, they admit the reductions under dates of April 15, 1901 March 15. 1902, March 20, 1903, December 10, 1905, and October 19, 1904, and deny the other alleged reductions and say that,
38 even if made, they would have affected said railway but little.

REDUCTION OF PASSENGER RATES.

These defendants admit that complaint was made to them and that they issued the notice and held a hearing at which the said railway company was present and represented by the solicitor who filed the bill in this cause, and made the claims as alleged in this bill. They deny that the complainant was present or made any request to these defendants to make investigation, and they say that after hearing said cause and considering that the said railway company had adopted a three-cent rate on a large part of its line, they were of opinion that justice required that the rate should be uniform on said line north of Homestead, and that no satisfactory reason had been shown why it should not be so ordered, and consequently made the order complained of in this division of the bill, and they deny that they deliberately sought to inflict upon the said railway company an additional annual deficit and they say, as they have heretofore said, that in their belief any such deficit is either pretended or is the result of extravagance and bad management. And they say that the said order is reasonable and just and ought to be enforced.

39 ## AGGREGATE LOSSES.

These defendants deny that the revenues of the railway defendant have been decreased as alleged in this division of the bill, and they say that an average deficit taken through a number of years is immaterial to this cause, but nevertheless they deny that it is as stated in the bill and allege there is no present deficit whatever unless as the result of mismanagement, and that there will not be a deficit if their orders shall be enforced, and the said railway properly managed.

INCREASED PASSENGER RATES NECESSARY.

These defendants have no knowledge nor belief concerning Exhibit 20, and require strict proof of the same.

They deny that they permit said railway company to charge four cents a mile south of Miami, and say that between Homestead and Miami, a distance of forty miles, the rate is three cents per mile, and they admit that they permit some other railroads to charge four cents a mile, having due regard in each instance to the justice of the case.

ADDITIONAL AGENTS THREATENED.

These defendants submit that they cannot be required to answer nor be enjoined before they have taken action in each particular case.

40 BORROWING MONEY TO PAY INTEREST.

These defendants deny that the railway company defendant has not earned its interest charges as alleged, and they deny the correctness of the statements of account in this division of th bill. and they deny that it was necessory to borrow money to pay the interest on said bonds, and say that any such alleged borrowing was merely fictitious or colorable or else was the result of bad management or extravagance or the outcome of improper accounting. And they say that the owners or owner of said bonds is in no danger of any loss whatever;; that the present suit is merely collusive and was moved and instigated by the Florida East Coast Railway Company, so that the bill might appear to be brought by a creditor of the said Company and not by itself.

INJURIOUS ACTION OF THE FLORIDA EAST COAST RAILWAY COMPANY.

These defendants are advised that the allegations of this division of the bill are confined to the said railway company, and that it is not necessary for them to make answer thereto.

EXPOSURE TO FINE AND MULTIPLICITY OF SUITS.

These defendants are advised that the allegations of these divisions of the bill are matters of law, which it is not necessary for them to answer.

41 INSOLVENCY THREATENED.

These defendants deny that they have made any unjust orders relative to the Florida East Coast Railway Company and deny any purpose on their part to opress and injure it and to impair and destroy the value of said bonds, and they deny that there is any threatened or probable insolvency of said railway company, which. notwithstanding its claim, does a valuable and remunerative business, and they say that the allegations of threatened insolvency is a mere pretense and sham, and collusively made in order to maintain this or other like suits.

GENERALLY.

And as to each and every other allegation of the said bill which has not been answered hereinbefore specially, these defendants do deny the same, and, having answered fully, pray to be herein dismissed with their cost and charges in this behalf most wrongfully sustained.

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.....
As Railroad Commissioners of the State of Florida.

.....
Solicitor for the Railroad Commissioners of the State of Florida.

REPLICATION TO ANSWER OF RAILROAD COMMISSIONERS OF FLORIDA.

In the Circuit Court of the United States for the Southern District of Florida.

IN CHANCERY.

The Trust Company of America, a Corporation Etc.,

vs.

Florida East Coast Railway Company, a Corporation, etc., Newton Blitch, R. Hudson Burr and John L. Morgan, as Railroad Commissioners of the State of Florida; William H. Ellis, Attorney General; Augustus G. Hartridge, State Attorney for the Fourth Judicial Circuit of Florida; Augustus V. Long, State Attorney for the Eighth Judicial Circuit of Florida, and John C. Jones, State Attorney for the Seventh Judicial Circuit of Florida.

BILL FOR INJUNCTION, RELIEF, ETC.

The replication of the Trust Company of America, a corporation, to the answer of the above-named defendant.

This repliant, saving and reserving to himself all, and all manner of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the
2 said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that, any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by its said bill it hath already prayed.

.....

Solicitor for Plaintiff.

CERTIFIED COPIES OF INJUNCTIONS

In the Circuit Court of the United States, for the Southern District of Florida.

The Colonial Trust Company, a corporation duly organized and existng under the laws of the State of New York,

vs.

Florida East Coast Railway Company, a corporation duly chartered and existing under the laws of the State of Florida; R. Hudson Burr, John L. Morgan, and Newton Blitch as Railroad Commissioners of the State of Florida, duly elected and qualified and performing the duties of such Railroad Commissioners; Augustus G. Hartridge, State Attorney for the Fourth Judicial Circuit of Florida; Augustus V. Long, State Attorney for the Eighth Judicial Circuit of Florida; and John C. Jones, State Attorney for the Seventh Judicial Circuit of Florida; William H. Ellis, Attorney General.

Bill to declare unreasonable and unjust certain rates prescribed by the Railroad Commissioners of Florida for passenger fares; to declare unreasonable and unjust certain orders of the Railroad Commissioners of Florida, establishing agencies; to declare the same taking property without just compensation; to enjoin enforcing said rates and orders; to enjoin the prosecution of and inflicting of fines on the Florida East Coast Railway Company; for the protection of Complainant's Trust; and for injunction and relief.

To the Florida East Coast Railway Company, its officers, agents, Attorneys and Employes, Greeting:

The Court having, after argument, ordered Temporary Injunction issued as prayed for in the above entitled cause,

You, the said Florida East Coast Railway Company, your officers, agents, servants, Attorneys and employes, are hereby enjoined and restrained from carrying into effect the Order of the Florida Railroad Commissioners, dated in May, 1905, reducing the rate of freight on lumber on the line of your railroad; or from carrying into effect the order of the Florida Railroad Commission, dated June 13, 1906, fixing the rate for transportation of passengers on your line of Railroad north of Homestead, Florida, at a maximum rate of 3c a mile; or from

carrying into effect the Order of the Florida Railroad Commission, dated April 30, 1906, requiring you to establish an agent at Cocoanut Grove, Florida, until the further order and decree of this Honorable Court.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States and the seal of said Court, at Jacksonville, in said District, this Nineteenth day of April, A. D. 1907. (Signed) E. O. LOCKE, *Clerk.*

(U. S. Ct. Ct. Seal)

A true copy. Witness my hand and the seal of the Court, March 9, 1908. (Signed) E. O. LOCKE, *Clerk.*

CERTIFIED COPIES OF INJUNCTIONS

3

In the Circuit Court of the United States, for the Southern District of Florida.

The Colonial Trust Company, a corporation duly organized and existing under the laws of the State of New York,

vs.

Florida East Coast Railway Company, a corporation duly chartered and existing under the laws of the State of Florida; R. Hudson Burr, John L. Morgan, and Newton Blitch as Railroad Commissioners of the State of Florida, duly elected and qualified and performing the duties of such Railroad Commissioners; Augustus G. Hartridge, State Attorney for the Fourth Judicial Circuit of Florida; Augustus G. Hartridge, State Attorney for the Fourth Judicial Circuit of Florida; Augustus V. Long, State Attorney for the Eighth Judicial Circuit of Florida; and John C. Jones, State Attorney for the Seventh Judicial Circuit of Florida; William H. Ellis, Attorney General.

Bill to declare unreasonable and unjust certain rates prescribed by the Railroad Commissioners of Florida for passenger fares; to declare unreasonable and unjust certain orders of the Railroad Commissioners of Florida, establishing agencies; to declare the same taking property without just compensation; to enjoin enforcing said rates and orders; to enjoin the prosecution of and inflicting of fines on the Florida East Coast Railway Company; for the protection of Complainant's Trust and for injunction and relief.

To R. Hudson Burr, John L. Morgan, and Newton Blitch, as Railroad Commissioners of the State of Florida; William Ellis, Attorney General; Augustus G. Hartridge, State Attorney for the Fourth Judicial Circuit of Florida; Augustus V. Long, State Attorney for the Eighth Judicial Circuit of Florida; and John C. Jones, State Attorney for the Seventh Judicial Circuit of Florida, their agents, servants, attorneys

4 and employes, Greeting:

The Court having after argument, ordered temporary injunctions issued as prayed for in the above entitled cause,

You, the said R. Hudson Burr, John L. Morgan, and Newton Blitch, as Railroad Commissioners of the State of Florida, your agents, servants, attorneys and employes, are hereby enjoined and restrained from enforcing, or requiring the Florida East Coast Railway Company to enforce or obey the Order Issued by the Florida Railroad Commission, dated June 13,

1906, providing and ordering that the full rate to be charged for transportation of passengers over the line of the Florida East Coast Railway Company north of Homestead, Florida, shall be 3c per mile, and the half rate shall be one and a half cents per mile for each passenger; and providing further,, that children under five years of age shall be carried free, and that children between the ages of five and twelve shall be charged half fare, until the further order and Decree of the Court.

And you, and each of you, as Railroad Commissioners of the State of Florida, your Agents, servants, attorneys and employes, under and pursuant to said Order are further enjoined and restrained from enforcing and carrying into effect the order issued by the Railroad Commission of Florida to
5 the Florida East Coast Railway Company, dated the 30th day of April, 1906, ordering the said Florida East Coast Railway Company to establish an agent at Cocoanut Grove, Florida, until the further Order and Decree of the Court.

And you and each of you, as Railroad Commissioners of the State of Florida, your Agents, Attorneys, servants and employes, are further enjoined and restrained from enforcing and carrying into effect the order of the Florida Railroad Commission, dated in May, 1905, reducing the rate of freight and lumber on the line of the Florida East Coast Railway Company.

And you, and each of you, as Railroad Commissioners of Florida, your agents, servants, Attorneys and employes, are enjoined and restrained from reducing the rate per mile per passenger to 3c maximum under the order of the Railroad Commission of the State of Florida, dated the 13th day of June, 1906, until the further Order and Decree of this Court.

And you, William H. Ellis, as Attorney General of the State of Florida; Augustus G. Hartridge, as State Attorney for the Fourth Judicial Circuit of Florida; Augustus V. Long, as State Attorney for the Eighth Judicial Circuit of Florida; and John C. Jones, as State Attorney for the Seventh
6 Judicial Circuit of Florida, your servants, agents, attorneys and employes, are enjoined and restrained from instituting any suit or prosecuting the same against the Florida East Coast Railway Company to enforce or carry into effect the Order of the Florida Railroad Commission, dated the 13th day of June, 1906, fixing the rate per mile for transporting passengers at 3c maximum on the line of the Florida East Coast Railway Company, north of Homestead, Florida; or from instituting any suit or prosecuting the same enforcing the order of the Railroad Commission of Florida, dated the 30th day of April, 1906, ordering and requiring the Florida East Coast

Railway Company to establish an agent at Cocoanut Grove, Florida; or from instituting any suit or prosecuting the same against the Florida East Coast Railway Company, to enforce the Order of the Railroad Commission of Florida dated in May, 1905, reducing the rate of freight on lumber on the line of the Florida East Coast Railway Company; or from instituting or prosecuting any suit against the Florida East Coast Railway Company to collect any penalty imposed by the Florida Railroad Commission for failure to obey or carry into effect the several Orders of the Florida Railroad Commission heretofore described and set forth until the further order and Decree of this Honorable Court.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit Court, at Jacksonville, in said District, this twentieth day of April, A. D. 1907.

(Seal) U. S. Ct. Ct.) E. O. LOCKE, *Clerk.*

A true copy.

Witness my hand officially and the seal of said Court, this

(Seal U. S. Ct. Ct.) E. O. LOCKE, *Clerk.*

(FLORIDA EAST COAST RAILWAY—Exhibit 2)
(Page 883)

VEGETABLES

Fiscal Year ending	Tonnage	Equivalent to Packages	Revenue	Av. rate per pkg 50 lbs.
June 30th, 1894	2,628,072	52,561	$ 6,613.45	12.77
June 30th, 1895	4,123,486	82,469	9,333.47	11.32
June 30th, 1896	4,938,831	98,777	14,296.18	14.47
June 30th, 1897	6,184,225	123,684	22,115.47	17.88
June 30th, 1898	11,400.979	229,019	52,787.08	23.15
June 30th, 1899	9,051,648	181,032	30,423.87	16.80
June 30th, 1900	9,033,537	180,671	35,539.94	19.66
June 30th, 1901	20,293,683	405,874	95,315.07	23.48
June 30th, 1902	28,450,950	569,019	128,933.42	22.65
June 30th, 1903	29,923,690	598,474	103,901.20	17.36
June 30th, 1904	52,583,111	1,051,662	209,215.09	19.89
June 30th, 1905	39,918,550	798,371	107,281.01	13.43
June 30th, 1906	42,354,347	847,087	113,825.98	13.43
June 30th, 1907	58,893,468	1,177,869	203,967.27	17.31

(FLORIDA EAST COAST RAILWAY—Exhibit 3)
(Page 889)

Year Ending January 30th, 1907

Class.	Revenue	Percentage
Oranges, Lemons and Limes	$ 51,434.83	03.5664
Bananas, Guavas, other Fruits	10,337.77	00.7168
Pineapples	159,364.49	11.0500
Vegetables	190,011.91	13.1751
Coal (Extension)	66,942.72	04.6422
Wood	15,897.63	01.1023
1st Class	120,110.84	08.3283
2nd Class	84,132.24	05.8336
3rd Class	65,361.80	04.5321
4th Class	69,327.76	04.8070
5th Class	23,462.78	01.6269
6th Class	208,456.58	14.4540
Class A	3,964.72	00.2750
Class B	26,727.60	01.8532
Class C	1,536.07	00.1065
Class D	67,788.38	04.7003
Class E	63,626.82	04.4118
Class F	8,238.64	00.5712
Class H	4,168.89	00.2890
Class K	8,069.04	00.5595
Class L	10,237.32	00.7098
Class M	52,846.47	03.6643
Class N	18,187.71	01.2611
Class O	558.49	00.0387
Class P	64,813.35	04.4940
Class R	22,538.23	01.5628
Turpentine	7,931.47	00.5499
Resin	16,123.96	01.1180
Total	$1,442,205.51	99.9998

(FLORIDA EAST COAST RAILWAY—Exhibit 4)
(Page 880)
[Not printed; duplicate page 154]

(FLORIDA EAST COAST RAILWAY—Exhibit 5)
(Page 885)

PINEAPPLES

Fiscal year ending	Tonnage	Equivalent to Packages	Revenue	Av. rate per pkg 50 lbs.
June 30th, 1894	5,387,573	67,344	$ 18,040.92	26.79
June 30th, 1895	1,478,825	18,485	4,770.15	25.79
June 30th, 1896	4,982,920	62,287	14,231.92	22.36
June 30th, 1897	16,168,853	202,111	54,454.63	26.94
June 30th, 1898	14,701,051	183,763	51,240.74	27.88
June 30th, 1899	7,779,945	97,249	24,938.94	25.64
June 30th, 1900	13,455,493	168,194	46,996.11	27.94
June 30th, 1901	19,375,698	242,196	66.009.15	27.25
June 30th, 1902	22 995,353	287,442	76,296.67	26.54
June 30th, 1903	45,497,091	568,714	147,817.45	25.99
June 30th, 1904	29,416,037	367,701	96,471.34	26.23
June 30th, 1905	29,655,101	370,689	88,733.37	23.93
June 30th, 1906	44,895,972	561,199	145,055.09	26.008
June 30th, 1907	46,223,898	577,799	145,512.08	25.18

275 (Florida East Coast Railway—Exhibit 6)
(Page 876)

EXPENSES COMPARED
Years 1901 and 1907
[Not printed; duplicate page 148]

276 (FLORIDA EAST COAST RAILWAY—Exhibit 7)
(Page 873)

STATEMENT OF EARNINGS AND EXPENSES
Years ending June 30th, 1902-03.

(1902)

EARNINGS:	
From Freight	$ 847,624.37
Passenger	757,378.71
Express	157,449.61
Mail	80,094.23
Rents	5,052.75
Buffet	17,295.75
Miscellaneous	65,702.88
Baggage Freight	6,349.54
Total	$1,936,947.84
MAINTENANCE OF EQUIPMENT:	
Superintendence	$7,267.68
Repairs to Locomotives	69,669.34
Repairs to Passenger cars	56,091.79
Repairs to Freight cars	29,437.68
Repairs to Work cars	569.02
Repairs to Machinery and Tools	5,193.83
Stationery and Printing	625.46
Other Expenses	3,517.80
Total	$172,372.60
MAINTENANCE OF WAY AND STRUCTURES:	
Repairs of Roadway and Track	$176,568.25
Renewals of Rails	1,770.76
Renewal of Ties	112,370.53
Repairs of Bridges	43,096.50
Repairs of Fences	6,746.05
Repairs of Buildings	37,679.59
Repairs of Docks and Wharves	3,118.70
Repairs of Telegraph	449.90
Stationery and Printing	801.06
Other Expenses	7.60
Total	$382,608.94
CONDUCTING TRANSPORTATION:	
Superintendence	$ 26,006.44
Engine and Roundhousemen	93,342.06
Locomotive Fuel	171,924.57

Water supply for Locomotives	7,529.99
Oil, Tallow, etc., for Locomotives	5,651.88
Other Locomotive Supplies	1,491.14
Train Service	56,575.31
Train Supplies and Expenses	41,480.96
Wages of Switchmen, Flag and Watchmen	16,803.48
Telegraph Expenses	15,234.05
Station Service	70,691.97
Station Supplies	3,937.74
Car Mileage	24,623.00
Loss and Damage	17,746.01
Injuries to Persons	7,289.21
Clearing Wrecks	416.32
Expense, Steamboats	2,254.09
Advertising	13,223.69
Outside Agencies	7,126.11
Commissions	1,347.50
Rent for Tracks, etc.	35,788.81
Rent, Buildings, etc.	540.00
Stationery and Printing	9,161.50
Expense, Buffet Service	16,639.89
Other Expenses	1,394.11
Total	$648,219.83
GENERAL EXPENSES:	
Salaries of General Officers	$21,360.00
Salaries of Clerks and Attendants	13,123.50
General Office Expenses and Supplies	1,275.70
Insurance	12,833.80
Law Expenses	7,903.50
Stationery and Printing	1,241.52
Other General Expenses	9,624.75
Total	$67,362.77
Total Earnings	$1,936,947.84
Total Expenses	1,403,291.64
Net Earnings	$533,656.20
Less Betterments and Equipment	670,640.61
	$136,984.41
Less Interest and Taxes	383,963.66
DEFICIT	$520,948.07

(1903)

EARNINGS:	
From Freight	$901,280.18
Passenger	788,948.12
Express	158,717.13
Mail	80,368.20
Rents	7,761.70
Buffet	19,767.61
Miscellaneous	53,372.90
Baggage Freight	7,991.32
Total	$2,018,207.16
MAINTENANCE OF EQUIPMENT:	
Superintendence	$9,651.78
Repairs of Locomotives	69,262.03
Repairs of Passenger Cars	66,364.10
Repairs of Freight Cars	30,908.60
Repairs of Work Cars	2,730.54
Repairs of Machinery and Tools	7,647.41
Stationery and Printing	731.60
Other Expenses	6,282.84
Total	$193,578.90
MAINTENANCE OF WAY AND STRUCTURES:	
Repairs of Roadway and Track	$169,720.98
Renewal of Rails	516.78
Renewal of Ties	69,594.85
Repairs of Bridges	55,176.90
Repairs of Fences	7,919.96
Repairs of Buildings	38,585.66
Repairs of Docks and Wharves	1,537.93
Repairs of Telegraph	614.52
Stationery and Printing	1,034.47
Other Expenses	128.08
Total	$344,830.13
CONDUCTING TRANSPORTATION:	
Superintendence	$28,037.57
Engine and Roundsousemen	97,332.65
Locomotive Fuel	213,446.58
Water Supply for Locomotives	11,671.07
Oil, Tallow, etc., for Locomotives	6,330.51
Other Supplies for Locomotives	2,113.15
Train Service	65,459.64
Train Supplies and Expenses	48,209.14
Wages of Switchmen, Flag and Watchmen	17,306.95
Telegraph Expenses	15,975.10

Station Service		81,497.89
Station Supplies		5,558.51
Car Mileage		16,077.68
Loss and Damage		19,865.75
Injuries to Persons		2,317.25
Clearing Wrecks		1,610.56
Expense, Steamboats		2,424.15
Advertising		17,554.33
Outside Agencies		6,128.76
Commissions		860.55
Rent for Tracks, etc.		39,184.62
Rent, Buildings, etc.		540.00
Stationery and Printing		10,819.92
Expense, Buffet Service		18,691.63
Other Expenses		3,795.27
Total		$732,809.23
GENERAL EXPENSES:		
Salaries of General Officers		$39,960.00
Salaries of Clerks and Attendants		16,362.45
General Office Expenses and Supplies		1,389.99
Insurance		6,197.86
Law Expenses		9,103.77
Stationery and Printing		1,727.07
Other General Expenses		5,633.38
Total		$80,374.52
Total Earnings	$2,018,207.16	
Total Expenses	1,351,592.78	
Net Earnings		$666,614.38
Less Betterments and Equipment		164,778.16
		$501,836.22
Less Interest and Taxes		594,889.43
DEFICIT		$93,063.21

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STATEMENT OF EARNINGS AND EXPENSES

Years Ending June 30th, 1904-05

(1904)

EARNINGS:	
From Freight	$1,120,737.10
Passenger	822,174.22
Express	222,991.97
Mail	80,358.84
Rents	10,052.11
Buffet	16,911.00
Miscellaneous	49,347.64
Total	$2,322,572.88
MAINTENANCE OF EQUIPMENT:	
Superintendence	$ 11,358.71
Repairs to Locomotives	67,090.03
Repairs, Passenger Cars	65,160.05
Repairs, Freight Cars	40,412.04
Repairs, Work Cars	1,844.07
Repairs, Machinery and Tools	6,318.42
Stationery and Printing	700.65
Other Expenses	8,958.20
Total	$201.842.17
MAINTENANCE OF WAY AND STRUCTURES:	
Repairs of Roadway and Track	$156,783.22
Renewal of Rails	401.03
Renewal of Ties	98,936.26
Repairs of Bridges	94,942.67
Repairs of Fences	8,827.40
Repairs of Buildings	36,700.92
Repairs of Docks and Wharves	1,470.98
Repairs of Telegraph	2,582.36
Stationery and Printing	942.04
Other Expenses	17.53
Total	$402,334.57
CONDUCTING TRANSPORTATION:	
Superintendence	$29,925.01
Engine and Roundhousemen	113,954.86
Locomotive Fuel	241,724.71
Water Supply for Locomotives	14,244.45
Oil, Tallow, etc., for Locomotives	6,592.09
Other Locomotive Supplies	2,835.91

Train Service	74,918.51
Train Supplies and Expenses	52,234.52
Wages of Switch, Flag and Watchmen	21,237.20
Telegraph Expenses	16,555.75
Station Service	91,370.46
Station Supplies	7,030.57
Car Mileage	20,759.74
Loss and Damage	15,362.52
Injuries to Persons	2,656.00
Clearing Wrecks	2,732.05
Expense, Steamboats	2,024.01
Advertising	18,951.52
Outside Agencies	5,902.88
Commissions	877.11
Rent for Tracks, etc.	42,785.59
Rent, Buildings, etc.	540.00
Stationery and Printing	10,644.33
Expense, Buffet Service	16,194.55
Other Expenses	1,207.96
Total	$813,262.30

GENERAL EXPENSES:	
Salaries of General Officers	$40,276.65
Salaries, Clerks and Attendants	17,965.00
General Office Expenses and Supplies	1,729.03
Insurance	5,978.37
Law Expenses	8,827.58
Stationery and Printing	1,562.47
Other General Expenses	8,050.11
Total	$84,389.21

Total Earnings	$2,322,572.88
Total Expenses	1,501,828.25
Net Earnings	$820,744.63
Less Betterments and Equipment	275,253.97
	$545,490.66
Less Interest and Taxes	736,198.76
DEFICIT	$190,708.10

(1905)

EARNINGS:	
From Freight	$1,023,501.51
Passenger	958,078.48
Express	189,865.82

Mail	77,990.00
Rents	9,895.36
Buffet	17,300.10
Miscellaneous	52,232.40
Total	$2,328,863.67

MAINTENANCE OF EQUIPMENT:

Superintendence	$11,509.15
Repairs, Locomotives	98,979.01
Repairs, Passenger Cars	76,796.58
Repairs, Freight Cars	51,846.19
Repairs, Work Cars	5,877.43
Repairs, Machinery and Tools	9,867.85
Stationery and Printing	833.77
Other Expenses	11,183.43
Total	$266,893.41

MAINTENANCE OF WAY AND STRUCTURES:

Repairs of Roadway and Track	$182,663.73
Renewal of Rails	158.55
Renewal of Ties	81,685.07
Repairs of Bridges	67,832.89
Repairs of Fences	3,021.40
Repairs of Buildings	34,836.54
Repairs of Docks and Wharves	2,436.60
Repairs of Telegraph	3,049.79
Stationery and Printing	743.65
Other Expenses	
Total	$376,428.22

CONDUCTING TRANSPORTATION:

Superintendence	$31,046.65
Engine and Roundhousemen	127,845.78
Locomotive Fuel	254,217.10
Water Supply for Locomotives	14,446.02
Oil, Tallow, etc., for Locomotives	7,887.56
Other Locomotive Supplies	2,011.49
Train Service	86,352.27
Train Supplies and Expenses	57,251.80
Wages of Switch, Flag and Watchmen	21,560.66
Telegraph Expenses	18,329.85
Station Service	97,286.45
Station Supplies	6,675.45
Car Mileage	16,351.70
Loss and Damage	17,414.67
Injuries to Persons	4,729.10
Clearing Wrecks	6,438.02

Expense, Steamboats	.....
Advertising	16,243.01
Outside Agencies	15,218.97
Commissions	971.14
Rent for Tracks, etc.	40,846.09
Rent, Buildings, etc.	540.00
Stationery and Printing	1,828.59
Expense, Buffet Service	16,306.61
Other Expenses	334.43
Total	$872,000.24
GENERAL EXPENSES:	
Salaries of General Officers	$41,268.38
Salaries, Clerks and Attendants	18,806.60
General Office Expenses and Supplies	1,558.81
Insurance	6,641.42
Law Expenses	6,934.67
Stationery and Printing	1,828.59
Other General Expenses	16,162.19
Total	$93,200.66
Total Earnings	$2,328,863.67
Total Expenses	1,501,522.53
Net Earnings	$720,341.14
Less Betterments and Equipment	235,552.18
	$484,788.96
Less Interest and Taxes	741,272.42
DEFICIT	$256,483.46

STATEMENT OF EARNINGS AND EXPENSES

278 Years Ending June 30th, 1906-07

(1906)

EARNINGS:	
From Freight	$1,139,567.21
Passenger	989,887.51
Express	203,248.50
Mail	79,215.55
Rents	9,552.28
Buffet	15,990.50
Miscellaneous	33,690.59
Total	$2,471,152.14
MAINTENANCE OF EQUIPMENT:	
Superintendence	$11,105.13
Repairs, Locomotives	115,543.59
Repairs, Passenger Cars	75,949.28
Repairs, Freight Cars	63,991.57
Repairs, Work Cars	7,221.93
Repairs, Machinery and Tools	13,980.26
Stationery and Printing	721.31
Other Expenses	14,995.92
Total	$303,508.99
MAINTENANCE OF WAY AND STRUCTURES:	
Repairs of Roadway and Track	$195,697.05
Renewal of Rails	46,504.52
Renewal of Ties	74,121.89
Repairs of Bridges	62,242.34
Repairs of Fences	5,200.25
Repairs of Buildings	47,134.70
Repairs of Docks and Wharves	7,393.02
Repairs of Telegraph	1,864.17
Stationery and Printing	890.79
Other Expenses	119.32
Total	$441,168.05
CONDUCTING TRANSPORTATION:	
Superintendence	$31,991.01
Engine and Roundhousemen	134,153.71
Locomotive Fuel	264,964.42
Water Supply for Locomotives	15,002.09
Oil, Tallow, etc., for Locomotives	7,943.34
Other Locomotive Supplies	2,608.35

Train Service	94,249.36
Train Supplies and Equipment	64,042.24
Wages of Switch, Flag and Watchmen	23,650.52
Telegraph Expenses	17,687.90
Station Service	112,141.14
Station Supplies	7,437.98
Car Mileage	23,557.30
Loss and Damage	25,219.14
Injuries to Persons	2,074.67
Clearing Wrecks	1,749.68
Advertising	15,179.63
Outside Agencies	16,139.24
Commissions	1,004.82
Rent for Tracks, etc.	37,711.83
Rent, Buildings, etc.	640.00
Stationery and Printing	13,005.98
Expense, Buffet Service	15,469.25
Other Expenses	2,402.82
Total	$930,026.42
GENERAL EXPENSES:	
Salaries of General Officers	$42,600.16
Salaries of Clerks and Attendants	20,534.30
General Office Expenses and Supplies	2,665.46
Insurance	6,432.00
Law Expenses	7,849.81
Stationery and Printing	2,426.71
Other General Expenses	10,434.66
Total	$92,943.10
Total Earnings	$2,471,152.14
Total Expenses	1,767,646.56
Net Earnings	$703,505.58
Less Betterments and Equipment	807,093.58
	$103,588.00
Less Interest and Taxes	841,579.69
DEFICIT	$945,167.69

(1907)

EARNINGS:	
From Freight	$1,442,205.51
Passenger	1,122,087.37
Express	246,601.65
Mail	78,684.07

Rents	11,538.21
Buffet	16,169.80
Miscellaneous	38,996.05
Total	$2,956,282.66

MAINTENANCE OF EQUIPMENT:

Superintendence	$12,483.18
Repairs, Locomotives	115,664.67
Repairs, Passenger Cars	83,471.02
Repairs, Freight Cars	60,649.39
Repairs, Work Cars	6,415.74
Repairs, Machinery and Tools	10,293.72
Stationery and Printing	809.23
Other Expenses	17,814.88
Total	$307,601.83

MAINTENANCE OF WAY AND STRUCTURES:

Repairs of Roadway and Track	$216,146.42
Renewal of Rails	167,273.43
Renewal of Ties	125,533.39
Repairs of Bridges	68,368.77
Repairs of Fences	5,878.23
Repairs of Buildings	54,484.02
Repairs of Docks and Wharves	2,242.06
Repairs of Telegraph	7,401.67
Stationery and Printing	1,371.17
Other Expenses	56.95
Total	$648,756.11

CONDUCTING TRANSPORTATION:

Superintendence	$37,127.20
Engine and Roundhousemen	170,972.13
Locomotive Fuel	341,176.06
Water Supply for Locomotives	16,501.36
Oil, Tallow, etc., for Locomotives	9,477.09
Other Locomotive Supplies	3,356.41
Train Service	111,926.60
Train Supplies and Expenses	75,671.69
Wages of Switch, Flag and Watchmen	39,973.22
Telegraph Expenses	25,975.35
Station Service	147,555.56
Station Supplies	9,415.66
Car Mileage	44,589.93
Loss and Damage	30,007.73
Injuries to Persons	4,787.43
Clearing Wrecks	4,978.53
Advertising	20,607.55

Outside Agencies	17,424.37
Commissions	1,978.38
Rent for Tracks, etc.	41,039.51
Rent, Buildings, etc.	900.00
Stationery and Printing	15,903.82
Expense, Buffet Service	18,873.16
Other Expenses	534.62
Total	$1,190,753.34

GENERAL EXPENSES:	
Salaries of General Officers	$35,158.14
Salaries of Clerks and Attendants	27,445.97
General Office Expenses and Supplies	2,888.71
Insurance	8,599.50
Law Expenses	15,680.12
Stationery and Printing	2,539.14
Other General Expenses	12,374.91
Total	$104,686.49

Total Earnings	$2,956,282.66
Total Expenses	2,251,797.77
Net Earnings	$704,484.89
Less Betterments and Equipment	544,619.15
	$159,865.74
Less Interest and Taxes	929,891.57
DEFICIT	$770,025.83

FLORIDA EAST COAST RAILWAY COMPANY.

(Exhibit No. 8. Page 874.)

Year		Amount	
1894,	Deficit	$ 56,336.52	
1895,	Deficit	110,547.44	
1896,	Deficit	437,456.23	
1897,	Deficit	180,143.18	
1898,	Deficit	257,165.79	
1899,	Surplus		27,193.03
1900,	Deficit	35,028.13	
1901,	Deficit	163,260.49	
1902,	Deficit	632,432.11	
1903,	Deficit	90,796.15	
1904,	Deficit	187,883.58	
1905,	Deficit	247,490.65	
1906,	Deficit	940,080.89	
		$3,338,621.16	
		27,193.03	
Deficit, 13 years		$3,311,428.13	

Average, $254,725.24 per annum.

(Defendant's Exhibit No. 2,)

BEFORE THE INTERSTATE COMMERCE COMMISSION

Florida Fruit & Vegetable Shippers' Protective Association,
vs.
Florida East Coast Railway Company, et als.
Docket No. 1168.

Florida Fruit & Vegetable Shippers' Protective Association,
vs.
Florida East Coast Railway Company, et als.
Docket No. 2566.

198 STATE OF FLORIDA
COUNTY OF ST. JOHNS

Personally appeared before me, F. W. Kirtland, who, being duly sworn, says that he is General Freight Agent of the Florida East Coast Railway Company, and that the annexed is the comparison of rates on pineapples, released, by car loads, from Cuba and from Jensen, Florida, to points named in the table, per crate of 80 pounds.

Affiant further says that the table showing the rate of freight per crate on pineapples from points in Cuba to Havana and the additional expenses in Havana is a correct statement of the charges from the gathering points in Cuba to Havana, which table is hereto annexed.

2 Affiant further says that these figures do not include the cost to the grower of transporting the pineapples from the farms in Cuba to the stations named.

Sworn to and subscribed before me this 28th day of January, 1910. (Signed) F. W. KIRTLAND.

(Signed) LOU BECCA PENNELL,
(Seal) *Notary Public, State at Large.*
My commission expires Sept. 13, 1910.

282 Comparison of rates on Pineapples, Released, Carload, Minimum 250 crates, from Cuba and from Jensen, Fla., per crate of 80 pounds.

Destination.	Inland Freight	Expense	Duty	Total	Cuba in Havana	Jensen	Diff. in favor of Jensen
Adrian, Mich	.8	16	7.5	67.5	99.	83.2	15.8
Akron, Ohio	.8	16	7.5	60.3	91.8	82.8	9.
Alton, Ill	.8	16	7.5	63.5	95.	83.6	11.4
Allegheny, Pa.	.8	16	7.5	55.5	87.	76.	11.
Anderson, Ind.	.8	16	7.5	68.3	99.8	80.4	19.4
Ann Arbor, Mich.	8	16	7.5	68.3	99.8	83.2	16.6
Battle C'k, Mich.	8	16	7.5	69.9	101.4	83.6	17.8
Bay City, Mich.	.8	16	7.5	69.9	101.4	85.2	16.2
Bloomington, Ill.	.8	16	7.5	63.5	95.	83.6	11.4
Brantford, Ont.	.8	16	7.5	75.5	107.	84.8	22.2
Buffalo, N. Y.	.8	16	7.5	53.9	85.4	77.	8.4
Burlington, Ia.	.8	16	7.5	68.3	99.8	86.	13.8
Cairo, Ill.	.8	16	7.5	62.7	94.2	70.	24.2
Canton, Ohio	.8	16	7.5	60.3	91.8	82.8	9.
Cambridge, O.	.8	16	7.5	61.1	92.6	84.4	8.2
Cedar Rapids, Ia.	8	16	7.5	79.5	111.	100.	11.
Chicago, Ill.	.8	16	7.5	63.5	95.	83.6	11.4
Chillicothe, O.	.8	16	7.5	64.3	95.8	80.	15.8
Cincinnati, O.	.8	16	7.5	63.5	95.	70.	25.
Cleveland, O.	.8	16	7.5	60.3	91.8	82.8	9.
Columbus, O.	.8	16	7.5	62.7	94.2	80.	14.2
Coshooten, O.	.8	16	7.5	61.1	92.6	81.	11.6
Council Bluffs, Ia.	8	16	7.5	85.1	116.6	103.	13.6
Danville, Ill.	.8	16	7.5	65.3	96.8	80.4	16.4
Davenport, Ia.	.8	16	7.5	79.5	111.	86.	25.
Dayton, Ohio	.8	16	7.5	65.1	96.6	80.	16.6
Des Moines, Ia.	.8	16	7.5	78.7	110.2	99.2	11.
Detroit, Mich.	.8	16	7.5	62.7	94.2	83.2	11.
Dubuque, Ia.	.8	16	7.5	79.5	111.	86.	25.
Evansville, Ind.	.8	16	7.5	62.7	94.2	72.	22.2
Elkhart, Ind.	.8	16	7.5	69.9	101.4	83.6	17.8
Erie, Penn.	.8	16	7.5	55.5	87.	77.	10.
Ft. Wayne, Ind.	.8	16	7.5	67.5	99.	82.	17.
Findlay, Ohio	.8	16	7.5	63.5	95.	81.2	13.8
Gr. Rapids, Mich.	8	16	7.5	69.9	101.4	85.2	16.2
Greenville, O.	.8	16	7.5	65.9	97.4	79.5	17.9
Guelph, Ont.	.8	16	7.5	75.5	107.	94.	13.
Hamilton, Ont.	.8	16	7.5	75.5	107.	86.8	20.2
Hunt'ton, W. Va.	8	16	7.5	66.7	98.2	81.2	17.
Ind'apolis, Ind.	.8	16	7.5	63.5	95.	80.	15.

Ironton, Ohio ...8	16	7.5	66.7	98.2	80.5	17.7
Jackson, Ohio ...8	16	7.5	65.1	96.6	80.6	16.1
Jackson, Mich. ..8	16	7.5	68.3	99.8	83.	16.8
Jeff'nville, Ind. .8	16	7.5	62.7	94.2	73.	21.2
Kansas City, Mo..8	16	7.5	81.9	113.4	102.	11.4
Lacrosse, Wis. ..8	16	7.5	85.9	117.4	98.8	18.6
Lansing, Mich. ..8	16	7.5	69.9	101.4	85.	16.4
L'renceburg, Ind. 8	16	7.5	65.1	96.6	75.6	21.
Lincoln, Neb. ...8	16	7.5	88.3	119.8	106.8	13.
London, Ont. ...8	16	7.5	75.5	107.	84.8	22.2
Louisville, Ky. ..8	16	7.5	62.7	94.2	70.	24.2
Madison, Wis. ..8	16	7.5	71.5	103.	86.	17.
Mariette, Ohio ..8	16	7.5	61.1	92.6	82.2	10.4
Mansfield, Ohio .8	16	7.5	61.9	93.4	81.2	12.2
Mattoon, Ill. 8	16	7.5	68.3	99.8	81.2	18.6
Memphis, Tenn. .8	16	7.5	59.5	91.	66.	25.
Milwaukee, Wis..8	16	7.5	63.5	95.	86.	9.
Min'polis, Minn..8	16	7.5	85.9	117.4	101.2	16.2
Newark, Ohio ...8	16	7.5	61.6	92.6	80.8	11.8
Newcastle, Ohio .8	16	7.5	67.5	99.	82.4	16.6
Omaha, Neb. 8	16	7.5	85.1	116.6	103.6	13.
Oshkosh, Wis. ..8	16	7.5	83.5	115.	98.8	16.2
Owensboro, Ky. .8	16	7.5	62.7	94.2	70.	24.2
Peoria, Ill. 8	16	7.5	63.5	95.	83.6	11.4
Pittsburgh, Penn.8	16	7.5	55.5	87.	76.	11.
Piqua, Ohio 8	16	7.5	65.1	96.6	79.6	17.
Pt. Huron, Mich..8	16	7.5	62.7	94.2	84.8	9.4
Quincy, Ill. 8	16	7.5	63.5	95.	83.6	11.4
Racine, Wis. 8	16	7.5	71.5	103.	86.	17.
Rock Island, Ill. .8	16	7.5	79.5	111.	86.	25.
Sandusky, Ohio .8	16	7.5	62.7	94.2	82.	12.2
Sioux City, Ia. ..8	16	7.5	85.1	116.6	105.6	11.
South Bend, Ind. 8	16	7.5	69.9	101.4	83.6	17.8
Springfield, O. ..8	16	7.5	65.1	96.6	78.8	17.8
Springfield, Ill. .8	16	7.5	63.5	95.	83.6	11.4
St. Louis, Mo. ...8	16	7.5	63.5	95.	78.	17.
St. Paul, Minn. ..8	16	7.5	85.0	117.4	101.2	16.2
Toledo, Ohio 8	16	7.5	62.7	94.2	82.	12.2
Terre Haute, Ind.8	16	7.5	63.5	95.	80.	15.
Toronto, Ont. ...8	16	7.5	75.5	107.	94.	13.
Van Wert, Ohio .8	16	7.5	65.9	97.4	80.8	16.6
Vincennes, Ind. 8.	16	7.5	68.3	99.8	78.8	21.
Wheeling, W. Va.8	16	7.5	55.5	87.	83.2	3.8
Wabash, Ind. ...8	16	7.5	69.9	101.	84.4	17.
Youngstown, O. .8	16	7.5	58.7	90.2	83.6	6.6
Zanesville, O. ...8	16	7.5	61.1	92.6	81.2	11.4

Authority for the average rate to Havana is a statement of rates furnished by the Western Rwy. of Cuba from all shipping points to Havana, copy attached herewith.

Authority for expenses in Havana harbor shown in detail by attached statement furnished and verified from the books of Piel & Co., Enna No. 4, and Gwinn & Olcott, Baratillo 7, Havana, Cuba.

Authority for the rates shown from Havana to destination, FEC. ICC., 195.

Authority for the rates shown from Jensen, FEC. ICC. 191.

284 PINEAPPLES—EXPENSES TO HAVANA

Freight per Crate to Christina Sta. in Havana from	Payable in Am. money L.C.L.	C.L.	Freight per Crate to Cristina Sta. in Havana from	Payable in Am. money L.C.L.	C.L.
Guane	.18	.12	Candelaria	.11	.07
Mendoza	.18	.12	Punta Brava	.11	.07
Sabaeo	.18	.12	Mangas	.10	.07
Galafre	.17	.11	Artemisa	.10	.06
San Juan	.17	.11	Canas	.09	.06
San Luis	.17	.11	Dagame	.08	.05
Pinar Del Rio	.16	.10	Alquizar	.08	.05
Ovas	.15	.10	Guira	.08	.05
Puerta de Golpe	.15	.10	Babriel	.07	.04
Consolacion	.15	.09	Salud	.06	.04
Herradura	.14	.09	Rincon	.05	.03
Paso Real	.13	.09	Santiago de las Vegas	.05	.03
Palacios	.13	.09	Rancho Boyeros	.04	.03
Taco Taco	.12	.08	Calabazar	.04	.02
San Cristobal	.12	.08			

PINEAPPLES—Expenses in Havana (Am. money), per box, 80 lbs. weight, valuation $1.00:

Cartage or wharfage ..... .025

If the shipment leaves from Hacendados or Havana Central wharf, no cartage is incurred. No cartage is incurred by shipments leaving from Regla; but, the wharf there being private property, a wharfage charge of 0.25 cents is collected, which balances this saving; and the minimum of such wharfage is $1.50 per shipment. If shipments lave from Caballeria wharf, cartage across the city must be paid.

Handling at wharf ..... .01
Lighterage ..... .03
Brokerage ..... .01

This charge varies according to the broker; some charge $1 a shipment, some $1.50; some .03 cents a crate.

285 EXHIBIT "E."

Statement of Pineapples from Havana, Cuba, for the fiscal year ending June 30th, 1909:

Fiscal Year 1908-09	Via N. Y. & Cuba Mail SS.	Via Morgan Line	Via Munson SS. Line	Via P. & O. SS. Co.	Total by months
July	37,263	1,097	60		38,425
August	2,263	436			2,982
September	3,329	305			3,634
October	2,194	145			2,339
November	9,197	1,047	1,055		11,299
December	5,782	1,375	3,276		10,433
January	13,891	767	2,825		17,483
February	15,232	1,095	9,454		25,781
March	21,432	4,594	11,441		37,467
April	283,442	48,104	78,014	11,760	361,320
May	316,621	27,815	82,870	56,742	484,148
June	211,910	28,027	18,518	9,700	266,155
Totals by Ports	862,844	114,807	207,613	78,202	1,263,466

I certify the above statement is a true record of the movement as exhibited by the Custom house records at Havana, Cuba.

(Signed) F. W. KIRKLAND,
General Freight Agent.

(Defendant's Exhibit No. 4)

STATE OF FLORIDA,
COUNTY OF ST. JOHNS.

Before me, personally appeared Mr. W. H. Chambers, who, on being duly sworn says that he has been the General Auditor, and lately Comptroller of the Florida East Coast Railway Company for the past twenty years, and in such capacity has had charge of all the accounts and books of the said Railway Company and is familiar with all charges, with the books, and all receipts and disbursements made during the period aforementioned, and that during the period aforementioned, at no time has there ever been declared or paid a dividend to the stockholders of the Florida East Coast Railway Company.

(Signed) W. H. CHAMBERS.

In witness wherof, I have hereunto set my hand and seal this 19th day of January, 1910.

(Signed) THEODORE V. POMAR,
Notary Public for the State of Florida at Large.

(Seal)

My commission expires Aug. 9, 1911.

(Defendant's Exhibit No. 4)

BEFORE THE INTERSTATE COMMERCE COMMISSION

Florida Fruit and Vegetable Shippers Protective Association

vs.

Florida East Coast Railway Company, et als.

Docket No. 1168.

Florida Fruit and Vegetable Shippers' Protective Association

vs.

Florida East Coast Railway Company, et als.

Docket No. 2566.

STATE OF FLORIDA
COUNTY OF ST. JOHNS

Personally appeared before me, W. H. Chambers, who, being duly sworn, says that he is the comptroller of the Florida East Coast Railway Company, and, as such, has charge of and is familiar with all the books of accounts of said Company, including receipts, expenditures, operating expenses, interest charges, taxes, etc.

Affiant further says that the statement of earnings and expenses of the Florida East Coast Railway Company for the five fiscal years ending June 30, 1905, 1906, 1907, 1908 and 1909, annexed hereto, is true and correct as taken from the books of the Company.

3 Affiant further says that the figures represent the entire earnings and operating expenses of the line of the Florida East Coast Railway Company and its branches from Jacksonville to Knights Key and the operating expenses on the line of the road from Jacksonville to Knights Key and branches.

Affiant further says that the interest paid during the fiscal year ending June 30, 1909, is only interest to the 31st of May, 1909; that, owing to the changed financial arrangements made

by the Company in the month of May, 1909, no interest for one month was paid on the outstanding bonds.

Affiant further says that the interest or fixed charges on the extension of the line of road from Miami to Knights Key is not included in the report of interest paid for the fiscal year ending June 30, 1909, said interest charges on this extension having been kept separate and apart from the interest charges on the main line of road from Jacksonville to Miami and branches.

Affiant further says that, if the interest charges on the outstanding bonds had been paid to the 30th of June, 1909, it would have added at least $55,245.83 to the payments required and that the interest charges applicable to the road
4 from Miami to Knights Key for the fiscal year ending June 30, 1909, were approximately $300,000.00.

Affiant further says that if these interest charges had been paid, there would have been a deficit of at least $300,000 instead of a surplus between the gross receipts and gross expenditures of the company.

Affiant further says that included in the earnings of the Florida East Coast Railway Company for the fiscal year ending June 30, 1909, are the charges made by the F. E. C. Railway Company for passengers and material transported over the line of the Florida East Coast Railway for work and use on the extension to Key West; that this item for freight and passengers is charged to the construction account of the extension and earnings of the road increased accordingly.

(Signed) W. H. CHAMBERS.

Sworn to and subscribed before me this 28th day of January, A. D. 1910. (Signed) THEO. V. POMAR,

(Seal) *Notary Public State at Large.*

My Commission expires Aug. 9, 1911.

290 STATEMENT OF EARNINGS AND EXPENSES

Showing Interest and Taxes, for Years Ending June 30th, 1905, 6, 7

1905

Earnings		$2,238,863.67
Miscellaneous Income		2,332.91
		$2,331,196,58
Operating Expenses	$1,608,522.53	
Interest and Taxes	743,605.33	2,352,127.86
Deficit		$20,931.28

1906

Earnings		$2,471,152.14
Miscellaneous Income		1,760.75
		$2,472,912.89
Operating Expenses	$1,767,646.56	
Interest and Taxes	843,340.44	2,610,987.00
Deficit		$138,074.11

1907

Earnings		$2,956,282.66
Miscellaneous Income		2,096.29
		$2,958,378.95
Operating Expenses	$2,251,797.77	
Interest and Taxes	931,987.86	$3,183,785.63

291 STATEMENT OF EARNINGS AND EXPENSES

Showing Interest and Taxes, for Years Ending June 30th, 1908-9.

1908

Earnings		$3,008,346.43
Miscellaneous Income		3,889.19
		$3,012,235.62
Operating Expenses	$2,387,084.61	
Interest and Taxes	1,009,354.93	
Other Deductions	16,255.15	$3,412,694.69
Deficit		$400,459.07

1909

Earnings		$3,373,554.27
Miscellaneous Income		1,905.53
		$3,375,459.80
Operating Expenses	$2,163,216.45	
Interest and Taxes	986,049.558	
Other Deductions	31,830.90	$3,181,096.93
Net Earning		$194,362.87

January 12, 1910.

Mr. Alex. St. Clair-Abrams,
Attorney at Law, Jacksonville, Fla.

Dear Sir:

Your letter of January 7, addressed to the Secretary of this Commission, concerning brief to be filed in the Florida Fruit and Vegetable case is received and referred to desk of Commissioner Prouty.

I am directed by the Commissioner to say that this case is today being argued and disposition will be made of it shortly, but that you may have, however, the additional time in which to prepare your brief. Respectfully,

WARD PROUTY,
Confidential Clerk.

Alex. St. Clair-Abrams, Attorney at Law.

Jacksonville, Fla., January 15th, 1910.

Hon. Charles A. Prouty,
Interstate Commerce Commission,
Washington, D. C.

Dear Sir:

I beg to acknowledge receipt of your letter dated the 13th and postmarked yesterday and not received by me until this (Saturday) afternoon.

I am very much afraid that the time for the final hearing, viz., Feb. 3d, is too short to enable us to produce the very material evidence necessary to bring before your Commission. For instance, in the figures submitted by the complainants only literage costs to the Cuban grower are included and nothing is said about the costs to the grower in Cuba from the gathering points to Havana. This being Saturday evening, I will not be able to see any of the officers of the Company until Monday, Mr. Parrot, the President being absent from the city today. I will, however, see him Monday and ascertain if it is possible to get up the testimony needed so as to present it to the Commission on the 3d of February.

You will remember that in answer to my objections Mr. Glasgow stated that he had no desire or intention to disturb the rates from Florida points, his language being on page 84 of the testimony:

C.A.P. No. 2

"That information I think will be pertinent to the inquiry, but in order to relieve anxiety I will state that we are not at this time attacking the Florida East Coast rates up to Jacksonville under this petition."

I submit, as stated by me when you were here in December, that when I read the supplementary complaint I did not suppose we were interested in anything more than the transfer rates from South Jacksonville and consequently did not prepare to meet any question as to the reasonableness of our rates from points upon the line to Jacksonville, and in vew of your letter of yesterday, we should be allowed further time than February 3d to prepare the testimony to sho wthe reasonableness of our rates, both on fruits and vegetables, which the Commission has voted to consider. There is not the slightest desire on our part to delay matters, but it will be necessary for us to send to Cuba to ascertain the cost to the grower there of bringing the fruit from the gathering points to Havana.

I thank you very much for your kindness in advising me of this before the serving of the order upon the Company. As soon as I can see Mr. Parrot, the President of the Company, I will write you further as to whether or not it will be possible for us to prepare the necessary testimony. If it is, I assure you we shall do so.

Again thanking you, I am,

Very truly yours,

ALEX. ST. CLAIR-ABRAMS.

FREDERICK C. BRYAN,
Law Offices,
701 Colorado Building.
Washington, D. C., January 20, 1910.

The Honorable, The Interstate Commerce Commission,
Washington, D. C.

In re Florida Fruit and Vegetable Shippers' Protective Association vs. Florida East Coast Railway Company et al. Nos. 1168 and 2566, I desire to enter my appearance herein as counsel for the Florida East Coast Railway Company in both cases, my appearance, however, having been entered in the first case, an dto submit herewith for filing the following papers:

Objection of Florida East Coast Railway Company to recision of decison of the Interstate Commerce Commission;

Motion to extend time for final hearing;

Affidavit of Joseph R. Parrot, President of the Florida East Coast Railway Company, setting forth reasons why the above motion should be granted.

All of which is respectfully submitted.

FREDERICK C. BRYAN.
Of Counsel for Florida East Coast Railway Co.

3 encls.

You can, with propriety, urge every legal objection to that course of action, and you can also urge every objection of propriety. The whole case upon that branch is open and you are concluded in no respect.

Truly yours,

CHAS. A. PROUTY,
Commissioner.

January 27, 1910.

Fred'k C. Bryan, Esq.,
701 Colorado Building, Washington, D. C.

Dear Sir:

I now have before me your letter of January 20 and the papers filed by you. I have looked through the papers, see no reason to change the opinion which I have just expressed to you orally, and have requested my clerk to so signify to you over the phone; of which this is in confirmation.

Truly yours,

C. A. PROUTY, *Commissioner.*

TELEGRAM.

Washington, D. C., January 27, 1910.

Alex. St. Clair-Abrams,
Jacksonville Fla.

Commission cannot postpone hearing. Have just been over matter with your Washington attorney Mr. Bryan. Have also written you. C. A. PROUTY, *Commissioner.*

January 27, 1910.

Alex. St. Clair-Abrams, Esq.,
Attorney, Florida East Coast Railway Co.,
Jacksonville, Fla.

Dear Sir:

I regret that owing to absence from Washington, your two letters of January 18 have but just come to my attention this morning.

I am wiring you that it would probably be sufficient if you were to have some one person in Washington as a witness who could introduce the statistical information referred to in your letters. You ought to bring that man who is most familiar

POOR COPY

with the railroad and its operation. Of course, the statistical information would be compiled for him by others from the records of the railroad. We always allow the introduction of this testimony, without the production of the witnesses who made the compilation.

If it should appear clear to the Commission that you, after having exerted all possible diligence, could not produce your testimony on February 3, a postponement might be granted; but I can see now no reason why you ought not to be here with such information as may be necessary to fully present your side of this question, and trust that you will do so.

A. St. C.-A. 2

You can, of course, at that time make any objection which you desire to the jurisdiction of the Commission or to the propriety of this procedure.

You will be allowed, upon the hearing, to introduce any testimony as to the amount of money put into your railroad, the cost of operation, and any facts in reference to the production of pineaples in Cuba or Florida and their sale in the United States, which you may desire.

Truly yours,

C. A. PROUTY, *Commissioner.*

Jacksonville Fla., Feb. 6, 1910.

Hon. C. A. Prouty,
Interstate Commerce Commission,
Washington, D. C.

Dear Sir:

I was much mortified and chagrined, on returning to the private car on the Florida East Coast Railway Company yesterday afternoon, to be told by Mr. Parrot that in my argument I had inadvertently taken up the wrong figures and based upon them results which, while not varying much from what they actually are, could not be obtained from the figures I cited from. This inadvertence arose first from the short time given for replying to the argument, but more particularly from the fact that, not expecting the case would be closed before the recess hour, I had supposed the arguments would be postponed until 2 o'clock and had intended making up the figures from the record and submit them.

I really thought I had stated in my argument the foundation of my conclusions, but Mr. Parrot advises me that I did not do so. As I am not willing that the record shall place me in the position of making statements in direct conflict with the facts, I ask the permission of the Commission to amend my

argument so that I shall state exactly what I intended to say and what I really supposed I had said.

The Commission will find that the totals taken from the record vary but very little from the figures given by me as conclusions. In the figures given by me I took simply
C.A.P. No. 2 the aggregate of five years' receipts from pineapples and vegetables, whereas, you will remember, I stated to the Commission that, if you reduced the rates on pineapples, as demanded by the complainant, we would also have to reduce the rate on vegetables, fruit and other products on the line of the Florida East Coast Railway, as it would be manifestly unjust to pick out pineapples alone to give this reduction, there being competition in vegetables, oranges and other products brought from abroad but not through Florida, but still competing with the Florida production.

You must bear in mind that there is no reduction, and can be none, in operating expenses or in taxation; to the contrary, with the present demand for increased wages pressing upon this, as well as every other railroad in the United States, it will be fortunate if the operating expenses do not increase.

I, therefore, think it due to the Florida East Coast Railway Company that there should be a correction of my mistake and, as the matter is of so much importance I repeat that I ask that the minutes be corrected so as to make me say what I intended to say and what I think from your reading of the enclosed you will perceive was what I did really mean.

I enclose you proposed amendment to my argument, and will forward you in a few days printed brief elaborating the legal position we take on the questions now before the Commission.

C.A.P. No. 3 Trusting that the Commission will grant the request, and with assurances of my personal consideration, I am, my dear sir,

Very truly yours,

(Signed) ALEX. ST. CLAIR-ABRAMS.

AMENDMENT TO ARGUMENT.

If the rate on pineapples is reduced, as required by the complainant, about, as I understand it, 8 cents per crate on the Florida product, this would have to be followed necessarily by a reduction of the rate to the same extent on vegetables of all kinds, oranges and other fruits.

In 1909 there were, in round figures, 3,500,000 crates of oranges, vegetables, pineapples etc., transported from points

on the line of the Florida East Coast Railway to Jacksonville, and there distributed to various points. A reduction of 8 cents per crate from these figures would decrease the revenues from these sources $260,000, and then only if the volume of production this and succeeding years equalled the unprecedentedly large volume of 1909. In the year 1909, deducting the $155,000 of taxes the road had to pay, left only $831,000 profits applicable to the road, or less than 5 per cent on the aggregate actual cost of the road from Jacksonville to Miami, with the branches approximately fixed at $20,000,000, and which could not be replaced at this time for $20,000,000. Deducting this $260,000 from $831,000, there would remain only $571,000 of profit on the investment, or less than 3 per cent on the actual cost of the road, and less than 3 per cent of its present value.

If this was the only reduction that would become inevitable, the contention of the complainant's counsel might have
2 some plausibility, but it is not. The evidence is now before you, that, owing to the freeze of last December and the injury inflicted on many of the pineapple orchards, and the killing of the vegetables, the volume of production this year will decrease at leasht 30 per cent. As a consequence, instead of having in round figures 3,500,000 crates of Florida products in the shape of pineapples, vegetables, oranges, etc., to move, the Florida East Coast Railway Company will have not exceeding 2,334,000. This would involve a further loss, in round figures of $186,000 more, or an aggregate loss of revenue of $446,000. Deducting this from the $831,000 of last year available as profit on the investment, and you would have a balance of $385,000 as a profit on the investment—an investment of $20,000,000, or less than 2 per cent on the investment. But this is not all. As testified to by Mr. Beckwith, the inevitable and certain shortage of the fruit and vegetable crops on the line of the road this year will necessarily be followed by a corresponding decrease in the volume of freight shipped over the line from Jacksonville to Miami and, estimating this conservatively at only 50 per cent of the loss of revenue from the fruit and vegetable crops, this involves a loss of $666,000 of revenue, or nearly $700,000 stated by me in my argument to the Commission. In other words, the demands of the complainant involve practically the wiping out of the entire profits of the road and leaving it utterly unable to pay even the interest on
3 the $10,000,000 of 4½ per cent bonds. In fact the loss alone that is inevitable from the pineapple vegetable and fruit shipments would reduce the earnings available for the payments of the interest on the $10 000,000 of 4½ per cent first mortgage bonds to $385,000, or $65,000

less than the amount called for, leaving absolutely not one dollar of earnings applicable to the income bonds. A reduction of rates so drastic as is demanded by the complainant would, besides utterly destroy everything like equality of rates on the entire freight business of the road, and would inevitably call for other equaly radical reductions on every other class of freight.

The contention of counsel for complainant that this reduction would only involve $209 000 is utterly groundless and it is also utterly inconsistent with the admissions of counsel that the volume of fruit, vegetables, pineapples, etc., will not be as great this year as it was last year. It must be borne in mind that the value of production last year largely exceeded anything ever known any year before. Even if the volume of production should be as great this year as it was last year, after paying the $450,000 interest on the $10,000,000 of first mortgage bonds, there would remain but $181,000 to pay the interest on the $20,000,000 of outstanding income bonds, or less than 1 per cent only, or, if the Commission confines its consideration to only $10,000,000 of these income bonds, which, with the $10,000,000 of first mortgage bonds, would represent the actual cost—although not by several millions of dollars—the present value of the line from Jacksonville to Miami and branches, it would leave a balance that would not pay 2 per cent on $10,000,000 of income bonds.

4

It is respectfully submitted however, that this Commission cannot ignore the fact that the earnings on the main line between Jacksonville and Miami are and have been largely augmented, particularly in the passenger earnings, by the extension from Miami to Knights Key, and that the entire outstanding bonds aggregate considerably less than the cost of construction of the entire road from Jacksonville to Miami and on the extension.

Even if the road should earn as much as it did last year, viz: $831,000, after paying $450,000 interest on the $10,000,000 of first mortgage bonds, there would remain but $381,000 applicable to income bonds, or less than 4 per cent on $10,000 000 of these bonds.

It follows, therefore, that if this Commission only considers, as insisted upon by the complainant, the cost of the line from Jacksonville to Miami and its branches, in fixing the rates on pineapples from points on this portion of the road, the entire earnings of 1909 for the fiscal year ending June 30th, including what the extension earned and the addition that the extension gave to the main line would bring but 4.31 per cent profit on the money actually invested in the line from Jacksonville to

Miami and its branches, thereby ignoring entirely the extension and the increased earnings on the main line that the extension gave to the main line.

This would be unjust if the net earnings of the road were large enough to consider the cost of the extension; but, as the earnings stand, they do not give for the last year even a reasonable profit on the cost of the main line from Jacksonville to Miami and its branches, and, consequently, considering only the situation of the property as it now stands and its small profit, there should not be any reduction in the existing rates.

1525 *Stenographer's Minutes.*

Filed May 13, 1912. United States Commerce Court. G. F. Snyder, Clerk.

Before the Interstate Commerce Commission.

Docket No. 1168.

FLORIDA FRUIT AND VEGETABLES SHIPPERS' PROTECTIVE ASSOCIATION, Complainant,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY et al., Defendant-.

At Jacksonville, Florida.
Date March 2nd, 1911.

Filed as Petitioner's Exhibit 23, to be certified by the Secretary of the Interstate Commerce Commissioner.

1526 INTERSTATE COMMERCE COMMISSION,
WASHINGTON.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of that portion of the record in the cases of R. Hudson Burr, Newton A. Blitch and Royal C. Dunn as Railroad Commissioners of the State of Florida against the Seaboard Air Line Railway, docket No. 3808; same against the Atlantic Coast Line Railroad Company, docket No. 3808, Sub. No. 1, and Florida Fruit & Vegetable Shippers' Protective Association against the Atlantic Coast Line Railroad Company and others, docket No. 1168, itemized below, the originals of which are now on file and of record in the office of said Commission:

* * * * * * *

Transcript of testimony in docket Nos. 1168, 3808 and 3808, Sub. No. 1, taken at Jacksonville, Florida, March 2, 1911.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 30th day of March, 1912.

[Seal of the Interstate Commerce Commission.]

JOHN H. MARBLE,
Secretary.

1527 United States Commerce Court. Filed May 13, 1912. G. F. Snyder, Clerk.

Before the Interstate Commerce Commission.

Docket No. 1168.

FLORIDA FRUIT AND VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION, Complainant,
versus
ATLANTIC COAST LINE RAILROAD COMPANY et al., Defendants.

Docket No. 3808.

RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA, Complainant,
versus
SEABOARD AIR LINE RAILWAY, Defendant.

JACKSONVILLE, FLA., *March 2nd*, 1911.

Before Charles A. Prouty, Commissioner.

Appearances:

Louis C. Massey, Esq., (Tallahassee, Fla.), for the Railroad Commissioners of Florida.

1528 A. A. Boggs, Esq., (Miami, Fla.), for the Florida Fruit and Vegetable Shippers' Protective Association.

R. Walton Moore, Esq., (Washington, D. C.), for the Seaboard Air Line Railway and Atlantic Coast Line Railway.

Alex. St. Clair-Abrams, Esq., (Jacksonville, Fla.), for the Florida East Coast Railway.

Messrs. Burr, Dunn & Blitch, Railroad Commissioners of the State of Florida.

1529 *Index of Witnesses.*

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R. Hudson Burr	22	57
C. R. Capps	115	...
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L. B. Skinner	166	167
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R. C. Capps	174	198
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1530 *Index of Exhibits.*

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COPY BOUND CLOS

1531 *Proceedings.*

Commissioner Prouty: Gentlemen, we are here once more to take up the fruit and vegetable question, this time from the point of production up to the base point. The two matters are the supplemental petition filed in 1168, Florida Fruit & Vegetable Shippers Protective Association against the Atlantic Coast Line Railroad Company, and others, by the Florida Fruit and Vegetable Shippers Protective Association, and an intervening petition filed by the Railroad Commission of Florida. The other proceeding is No. 3808, Railroad Commissioners of the State of Florida against the Seaboard Air Line Railway, and a sub-petition by the Railroad Commissioners of Florida against the Atlantic Coast Line Railway. I think these three proceedings put in issue rates generally on vegetables and citrus fruits from points of production in Florida up to base points. Who appears here for the Florida Fruit and Vegetable Shippers Protective Association?

Mr. Boggs: I do.

Commissioner Prouty: Who appears for the Railroad Commissioners of the State of Florida?

Mr. Massey: I do, if the Commission please.

Commissioner Prouty: Who appears for the Florida East
1532 Coast Railway Company?

Mr. St. Clair-Abrams: I do.

Commissioner Prouty: For the Atlantic Coast Line?

Mr. Moore: I do.

Commissioner Prouty: For the Seaboard Air Line?

Mr. Moore: Yes, sir.

Commissioner Prouty: Mr. Boggs, what have you to say of your petition against the Florida East Coast Railway?

Mr. Moore: May I say one thing in advance, and that is that we have not had an opportunity to file our answers to these two original petitions, and I will ask that they may be considered as filed now. I will hand them to the stenographer along with the letters addressed to the Secretary of the Commission.

Commissioner Prouty: You may do so.

(The papers so offered were received and filed).

Mr. Moore: It seems these answers refer to the proportional rates from producing points to the base points as still in effect. I understand the rates from the producing points to final destinations are joint rates and are so shown in the published tariffs. I was not aware of that fact at the time the answers were drafted.

1533 Commissioner Prouty: That is to say that the proportional rate to the base point and from the base point have been put together in the tariff as one through rate?

Mr. Moore: Those two factors have been used in constructing the rate.

Commissioner Prouty: So that there is a joint rate to-day from the point of production to the point of consumption or final destination.

Mr. Moore: I understand so. The Atlantic Coast Line tariff

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showing those rates has become in effect recently, perhaps just a little while before the petition was put in.

Commissioner Prouty: That is not so with the Florida East Coast, is it?

Mr. St. Clair-Abrams: I am not informed as to the scope or extent of the testimony that will be offered on the other side. If it is going into the matters generally involving the reasonableness of our rate to the base point, we could not possibly prepare the necessary testimony, especially in view of the last decision of the Interstate Commerce Commission on the advanced rates sought. For example, I have a case pending now for the East Coast Railway against the State Railroad Commission in this United States Court, in
1534 which I have taken a large amount of testimony involving the present value of this property from Jacksonville to Miami, excluding the extension entirely. Up to the time we had last taken testimony, I had shown a present valuation four years ago of $17,767,000. Since then we have paid in betterments and in improvements and additional equipment, $813,000. We have spent over $300,000 in the freight warehouse we have built in connection with the Atlantic Coast Line, making the valuation of four years ago of over $19,000,000. Now the present valuation is probably $1,000,000 more for the same territory, in view of the increased value of the property, the increased cost of labor, and we shall insist that in view of all we have earned, we have not yet earned a reasonable profit on the value exclusive of the extension. We have paid but 4½ per cent on $10,000,000 of bonds, and 3½ per cent on $20,000,000, and have not paid one cent of dividend for many years on the stock which is outstanding. These are matters which, I take it, must be taken into consideration in considering the reasonableness of a rate.

We can show that within the last year we have voluntarily and in connection with the State Railroad Commission, largely reduced rates on citrus fruits and vegetables, and freights generally.
1535 Now to present the matter clearly to the Commission, we should claim the right to show the present value of our property, so that the Commission might determine whether we are not to be permitted to earn anything practically on the value of our property.

Commissioner Prouty: Let me ask Mr. Boggs a question, Mr. St. Clair-Abrams. What do you contemplate showing in your supplemental petition? You ask in that petition, as I remember it, that rates from points of production up to Jacksonville on citrus fruits and vegetables be reduced. What evidence did you contemplate introducing as bearing upon that proposition?

Mr. Boggs: The position which we have taken in regard to that matter is that the Commission has already adjudicated in this case, No. 1168, that citrus fruits and pineapples should take the same rate, and all we expect there is to stand on that proposition, and to ask that the existing rates on citrus fruits which are now higher than those on pineapples, shall be equalized with the pineapple rate, unless the carriers can make some showing in exceptional circumstances

which, in this particular case, would justify a departure from
1536 the rule which we understand the Commission to have adopted in that matter. As to vegetables, we feel that the record already in this case is very voluminous, and that the Commission is well apprised of the situation as it existed at the time the testimony was last taken, and we merely expect to show that the volume of business has largely increased since that time, and also we expect to show that the freight earnings of the railroad company have vastly increased, and on the crop which is now being moved will increase still more, and that as the vegetable traffic takes the same service as that on citrus fruits and pineapples, that that fact should be recognized in the rate making, recognizing also the difference in the weight of the packages of fruits and vegetables.

Commissioner Prouty: Mr. Massey, what do you intend to claim in these three proceedings brought by the Railroad Commission of the State? You seem to ask in general that a carload rate be established which is less than the carload rate now in effect. You also ask some rather radical reductions in the present long distance less-than-carload rate. Now, is it your purpose to introduce testimony tending to show that the present rates are exorbitant, in addition to the testimony already introduced.

Mr. Massey: My purpose, may it please the Commission,
1537 is to introduce testimony to that effect. The opinion of the Interstate Commerce — which referred to these base point rates as having been established by the Florida Railroad Commission, or at least suggested by them. I propose to show that they were suggested in view of the conditions at that time; that conditions have changed, and that the rates suggested in the petition are no more than reasonable rates at this time.

Commissioner Prouty: What evidence do you expect to introduce on that point? Do you intend to go into the financial history and status of these railroads?

Mr. Massey: I had not expected to do so.

Commissioner Prouty: The Commission held, I believe, in the original case, that these rates up to the basing point were sufficiently low. They were all any quantity rate. It was suggested at that time that possibly carload rates ought to be established, which would be lower than the any quantity rates. We did subsequently establish carload rates upon both citrus fruits and vegetables from the base points to points of destination. We subsequently, at the petition of the shippers of pineapples upon the Florida East Coast Railroad, establish- carload rates for the movement of pineapples from point of production up to Jacksonville. We should perhaps ex-
1538 tend the carload rates to the movement of vegetables and citrus fruits upon the Seaboard Air Line and the Atlantic Coast Line from points of production up to the base point, which would involve the establishment of a somewhat lower carload rate than the any quantity rate approved. But I do not think that the Commission would be likely to reconsider its former holding that the any quantity rates were reasonable, unless a pretty strong case was made out showing that they were. We thought, when we came to examine

the rates on the Florida East Coast more carefully, that some of the long distance rates were too high in comparison with the short distance rates, and that the rates themselves were not consistent with one another. We might come to that same conclusion with respect to the rates on vegetables. But if the Commission were to re-examine this whole question, we should want to do it in an exhaustive fashion, so that whatever conclusion we reached might stand. We do not want every year or two to take up this question of reasonable rates.

Mr. Massey: Not at all. As I said, my motion was to show that the rates were established in regard to the business as it existed in 1902-'3, to show that the volume of business was very con-
1539 siderably greater, that the production had increased, and that the production at the more *destined* points which were not considered then had increased, which were taking the higher rate. That was about the sum and substance of the testimony that I had prepared to offer.

Commissioner Prouty: I do not know how my associates may have viewed this matter before, but in my own mind it did not seem to me upon the former hearing that these railroads in Florida were earning at that time, perhaps a fair income upon the investment; but it did seem to me that upon the rates which we approved, as the business developed, they would earn a handsome return upon their investment. Now if we scale down the rates as fast as business develops, that time will never come.

Mr. Massey: I understand that. We are not asking anything quite as unreasonable as that.

Commissioner Prouty: We are continually importuned to reduce the rate from Charleston because that is too high in proportion with the rate from Norfolk, and Florida, and so it goes. Now I see no other way except to establish what seems to be a reasonable rate for the movement of these vegetabls from Florida and all these other producing points, and having fixed that rate, let the railroad
1540 and the shipper work out their own salvation. I do not believe we can take the capitalization of one of these railroads to-day and make that the basis of these vegetable rates. I do not think we can do that. But we ought to try and fix what is a reasonable rate. That is what the Commission had in mind when it established these carload rates on pineapples on the Florida East Coast. Now, Mr. Beckwith thought that those rates were too low. Mr. St. Clair-Abrams thinks they are too low now, because they do not allow his road sufficient revenue, and perhaps they do not to-day; but considering that business and the extent of it, and all the facts before us, we thought that year after year, good years and bad years, the road ought to accord to the shipper that rate because it was reasonable as rates go in other places, but we did not reach that conclusion altogether nor very largely upon an examination of the financial condition.

Mr. Massey: No, I presume not. Now, do I understand, your Honor, that you do not care to go into or to reopen the question of

the reasonableness of these base point rates except as to the establishment of a carload rate?

Commissioner Prouty: We would like to hear any testimony you want to introduce. I simply suggest to you that if we are
1541 going to re-examine that question, it ought to be done now in a sufficiently comprehensive and exhaustive manner, so that whatever conclusion is reached will stand for the next dozen years, unless some unusual thing happens. The railroads ought to know what to depend upon, and the shippers ought to know what to depend upon, and this market ought to know what to depend upon, and this point of production ought to know what to depend upon as compared with other localities of production. We will hear of course, any testimony you desire to introduce.

Mr. St. Clair-Abrams: Will your Honor permit me to say a word so that you can get a clear idea of the situation.

Last February, in view of the suggestion made by the Commission during the hearing, and also from the decision of the Commission, we went to work to adjust our rates, and instead of having as heretofore a fixed price on carload lots on any quantity, we established a carload and less-than-carload rate on vegetables as well as citrus fruits, bringing about a reduction of fifteen per cent. on vegetables, which, taking the revenue up to June 30th, 1910, amounted to $581,778 on vegetables, and would reduce our revenue $87,266.71.

On citrus fruits we also made a carload and less-than-carload
1542 rate, and based upon our earnings to the 30th of June, 1910, of $147,105.55 would bring about a reduction of $22,065.83, or a total of $109,332.54. Now the present application calls for a still more radical reduction. In other words, on these two items alone we brought about a reduction of $109,332.00 voluntarily, in addition to which, owing to the demands of labor, we have had to increase our expense for labor alone $144,000 a year, making an additional burden on the company of $253,000. On the rate demanded it would involve an additional burden on us or loss, including the increase of wages, of $355,000.

Commissioner Prouty: You state in your answer that the present rates were approved by the Railroad Commission of Florida.

Mr. St. Clair-Abrams: Yes, to the base points.

Commissioner Prouty: When were they approved, under what circumstances were they aproved?

Mr. Beckwith: They were approved under general tariffs which were issued by the Railroad Commission by agreement with us, which would show a reduction in class rates as well as a reduction in fruits and vegetable rates. That is, the proportional rates we apply on state and interstate business.

Mr. St. Clair-Abrams: I omitted to mention that at the
1543 same time by agreement with the State Railroad Commission, we reduced the rates on other freights of $82,804.00.

Commissioner Prouty: Mr. Beckwith, when was your tariff established putting in these lower rates?

Mr. Beckwith: November 1st.

Commissioner Prouty: Will your Commission contend that the Florida East Coast tariff of November is unreasonable, Mr. Massey?

Mr. Massey: I will have to ask Mr. Boggs to answer that. I have only recently intervened in the case, and have been ill ever since it has been done, and that case I have paid very little attention to. My attention has been directed entirely to the Atlantic Coast Line and the Seaboard Air Line cases.

Mr. Boggs: The rates established on November 1st, 1910, were intrastate rates, and we have not conceived that they were in issue here in any way whatsoever. The rates which we are attacking are the interstate freight rates, which have remained unchanged since 1902, except for a modification which was made in the summer, I think, in July, of 1910, the effect of which was to establish carload and less-than-carload rates, raising the less-than-carload rates
1544 at some points, and reducing them at others, and effecting a reduction in the carload rates of a few cents at all points. In connection with that we would like to state we do not admit the correctness of the figures counsel has stated here, and would expect them to be put in evidence, and not treated as having been filed in the case until we have had an opportunity to analyze them, and cross-examine as to them.

Commissioner Prouty: Has the Florida East Coast ever made more than one set of rates? Has it ever made a rate for Jacksonville and a lower rate beyond?

Mr. Beckwith: It has in the past, but at present the tariff applies both on interstate and intrastate traffic north and south bound. That was our object in putting the tariff in, that there would be no difference between the rates.

Commissioner Prouty: When you bring a carload of oranges here which goes out by water, who unloads the car?

Mr. Beckwith: We unload it and deliver it to the lighter.

Commissioner Prouty: Where is it delivered to the lighter?

Mr. Beckwith: South Jacksonville.

Commissioner Prouty: Your rate on that would be the same as your rate on a carload which went through by rail?

Mr. Beckwith: Yes.

1545 Mr. St. Clair-Abrams: Very small, sir.

Mr. Boggs: I would like to correct that. I think Mr. Beckwith overlooks some points in that. I happen to recollect that the interstate rate from Miami on pineapples is 25 cents per crate in carload——

Mr. Beckwith: That is correct. We have never changed the rate. Pineapples take the same rate on local as the proportional rate on interstate shipments. The intrastate shipments take the line of rates issued by the Commission; in other words to-day, on local shipments to Jacksonville, pineapples take the same as citrus fruits.

Commissioner Prouty: But for interstate the pineapple rate is lower?

Mr. Beckwith: Lower. We have, of course, contended that those rates were put in under conditions to meet the Cuban competition,

and when we have brought this tariff up to the State Railroad Commission, they agreed to work it and help defend it. Mr. Burr told me afterwards that he had overlooked the question that pineapples were higher than the interstate rates were.

Commissioner Prouty: Mile for mile, how does the tariff of the Florida East Coast Line compare with the tariff of the At-
1546 lantic Coast Line, and the Seaboard Air Line, at the present time?

Mr. Beckwith: I think we are some higher; I would not say; I have never made the comparison.

Mr. St. Clair-Abrams: You must take into consideration that these perishable materials are 45 per cent of our entire freight. We have no cotton, and carry no phosphate rock, and scarcely any timber or lumber or naval stores, and our territory is infinitely more sparsely settled than the other roads. Furthermore, our passenger business, instead of being uniform every month as is almost always the case with the other two roads, shows an enormous difference between the winter and summer months.

Commissioner Prouty: What proportion of your entire gross receipts are your passenger receipts?

Mr. St. Clair-Abrams: Over 35 per cent of the entire business, and it has been gradually getting better. Four years ago it was nearly 50 per cent of our entire business. The freight increases are getting us gradually into a better condition than we have been heretofore. Other roads average about 80 per cent from freight, all sources, and 20 per cent from passengers; five years ago it was 50 per cent.

1547 Your Honor will remember in our report every year there was a large deficit. Now, for the past two years, we have been able to earn something, because the freight *have* increased, and we hope to get the average after a while of other roads. But even at this time our passenger receipts are out of all proportion to our freight receipts. We are compelled for five months a year, to increase our passenger trains more than double, from two to five passenger trains between here and Miami, and one of the other roads makes no increase at all, and the other road one train. During that entire season we run empty trains one way, and full trains the other, and then for the balance of the year we are down to a minimum on passenger traffic.

Commissioner Prouty: What rate per mile do you get on your passenger business?

Mr. Beckwith: Three cents.

Mr. St. Clair-Abrams: A single ticket three cents, and two and one half cents for a thousand mile ticket.

Commissioner Prouty: On this through business you get three cents?

Mr. Beckwith: The same on through and local.

Mr. Boggs: In some cases they run over three cents.

1548 Mr. St. Clair-Abrams: Our average is a little over two cents altogether.

Commissioner Prouty: Well, Mr. Boggs, you may proceed to introduce any evidence you desire.

Mr. Boggs: I will ask Mr. Burr to take the stand.

Mr. Massey: Do I understand these cases are being heard together?

Commissioner Prouty: Yes.

R. HUDSON BURR was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Boggs: Mr. Burr, you are Chairman of the Florida Railroad Commission, are you not?

Mr. Burr: I am.

Mr. Boggs: Your Commission has intervened and joined in the prayer of the supplemental petition here for an equalization of the citrus fruit rates for interstate movement with the pineapple rates, and also for a similar reduction in the vegetable rates. Please state why you think these reductions should be made, and also
1549 how the Florida Railroad Commission is associated with the existing interstate rate sheet which has been alluded to here.

Mr. Burr: As I understand, you desire a statement in answer to that reaching back to the establishment of the any-quantity rates on fruits and vegetables ten years ago.

Commissioner Prouty. Let us have the whole history of your connection with these rates, as a Commission.

Mr. Burr: Well, Mr. Prouty, the history of them goes back of my connection with the Commission, but I am familiar with some of the record.

Commissioner Prouty: How long have you been connected with the Commission?

Mr. Burr: I have been on the Commission since the first day of October, 1902.

Commissioner Prouty: Well, that is getting to be a good while. You may tell us what you know about the rates since then.

Mr. Massey: I would like to suggest that I am satisfied, for the Railroad Commission, that Mr. Burr's connection has been such that he can give you some interesting evidence from the record prior to that.

Commissioner Prouty: Very well, Mr. Burr may tell what
1550 he knows about these rates from whatever source his information is derived.

Mr. Burr: In 1897, and into a part of 1898, when the movement of vegetables commenced to be an item from the lower east coast, the rate to the base point was 35 cents. That is I am speaking now of the lower east coast, take the Miami territory.

Commissioner Prouty: You say the rate on what?

Mr. Burr: On vegetables.

Commissioner Prouty: On a crate of fifty pounds?

Mr. Burr: The standard crate, yes, sir, 50 pounds, the same standard as exists now. Some time, I think in 1898, some com-

plaint was made to the officials of the line which did not get to the Railroad Commission, as I recall. There was some change in the rate; the rate was made 30 cents from that territory to the base point on vegetables. There was no movement to amount to anything on citrus fruits at that time. Then in 1900, or early in 1901, there was an association of growers formed on the coast down there, to take a case before the State Commission on these rates, and as a result of that handling and the agitation at that time, the State Commission took those rates up, and in 1902 made a reduction. At
1551 that time the growers were asking for a ten cent reduction on vegetables in standard boxes. The Commission after hearing the matter and having several conferences with the officials of the East Coast Railroad, as the records in our office show, reduced the rate five cents a box, which became the any quantity rate on vegetables which existed up to the time that you heard testimony on this subject here before, last year; and in fact, the last crop was moved under it, and it has been slightly changed as stated by Mr. Beckwith a little while ago, this past year.

Those rates as shown by this extract taken from the minute book of the Railroad Commission, dated Tallahassee, Thursday, February 27th, 1902:

"The fruit and vegetable rates on the Florida East Coast Railway which have been under consideration for some months by the Commission were taken up, and after revision were adopted, to become effective on said railroad on or before September 1st, 1902. The rates as prescribed are as follows:"

I did not take off the rates, because the tariff shows those. Now at that time the production of vegetables in that territory, while it was in its beginning, and there was considerable movement, was
1552 nothing as compared with the increased production in years since. There has been a constant increase in the production of the product, except when the crop has been cut off by cold or floods, which has occurred in several cases. But barring accidents to the crop, the acreage has increased, and the amount of product has increased, and the tonnage has increased, and the present outlook in that section down there is for the biggest crop that has ever been grown in that or any other section of the state in one season. It is estimated by growers that are pretty well in touch with the situation, that there will be ten thousand carloads of tomatoes shipped out of Dade County the coming spring, including the 1910–11 season.

The rates that I have mentioned, going into effect September first, were adopted by the Commission just a little ahead of my becoming a member of it, but I have knowledge of it because I was a grower at that time, and am familiar with the records in the office on the subject. They were the sought by members of the Commission at that time. I talked with them about it, and they thought that the rates they agreed to at that time on the East Coast Railroad were reasonable rates. They have existed now, this is practically ten years, and have not been disturbed further by the State Rail-
1553 road Commission until this time. And we believe that with the increased production that the rate that was established

for a much larger volume of business ten years ago is not a reasonable rate to be charged to-day.

Commissioner Prouty: You mean for a much smaller volume. You said a much larger volume.

Mr. Burr: Much larger volume now as compared with the much smaller volume ten years ago. And in addition to that the citrus fruit business on that line has grown up, you might say, in that time, to what it is to-day. It was a mere beginning ten years ago, but that has been increasing as young groves have come into bearing.

Commissioner Prouty: Are you familiar with the agricultural possibilities of that part of the state?

Mr. Burr: Yes, sir, to some extent. I used to be a grower in that section.

Commissioner Prouty: Do you apprehend that the quantity of citrus fruits and pineapples, and fruits and vegetables grown on the Florida East Coast Line will increase beyond what it is now?

Mr. Burr: Yes, sir, I do. The citrus fruit business will increase, I think, some, but not in the proportion that the vegetable
1554 proportion will increase.

Commissioner Prouty: They raise vegetables in the southern part of Florida which supply the northern market rather earlier than those produced anywhere else, do they not?

Mr. Burr: Yes, sir.

Commissioner Prouty: What time in the year do these tomatoes begin to move from Dade County?

Mr. Burr: Well, do you mean the first crates, or the volume of the crop?

Commissioner Prouty: I mean in considerable quantity.

Mr. Burr: It does not move in considerable quantities until about this time of year, as a rule.

Commissioner Prouty: How long does that section have the market of New York, for example, to itself; how long before that market is invaded by tomatoes from other quarters?

Mr. Burr: Well, they begin to feel the effects of shipments from some other points in some years when climatic conditions are favorable, I would say about the last fourth of their shipments.

Commissioner Prouty: And that would be about when?

Mr. Burr: And that will vary one year with another, Mr. Prouty, owing to the state of the weather during the winter, as this
1555 crop is grown in the winter. You cannot tell when you put the seed in the ground at an even date this year with last year, just exactly when the volume of the stuff is going to move.

Commissioner Prouty: Does the producer of tomatoes in Dade County have the New York market for the month of March to itself, usually?

Mr. Burr: Pretty well, yes, sir.

Commissioner Prouty: After that other supplies begin to come in?

Mr. Burr: They begin to come in from other favored localities.

Commissioner Prouty: Do you know what locality usually comes in first?

Mr. Burr: You mean out of Florida?

Commissioner Prouty: No, not out of Florida, but from anywhere.

Mr. Burr: I should say that the Manatee territory under favorable conditions would be one of the sections to come in next, and then further up the peninsula, to De Soto and Polk counties.

Commissioner Prouty: When does Crystal Springs come in?

Mr. Burr: Crystal Springs does not come in until some
1556 time the early part of May, or the latter part of April.

Commissioner Prouty: And Eastern Texas comes in at about the same time?

Mr. Burr: Yes, sir, possibly a little later than Crystal Springs.

Commissioner Prouty: So that for the month of March and part of April, Florida has the call on the northern markets.

Mr. Burr: On vegetables, yes, sir.

Commissioner Prouty: And during that portion of the year the business is good, I suppose, and prices are pretty good?

Mr. Burr: Well, they vary some years with others.

Commissioner Prouty: That would depend upon the supply produced in Florida; in other words, your competition during that period would be between producers in Florida.

Mr. Burr: Yes, and the price, Mr. Prouty, would not depend altogether on the supply. It should be taken together with the conditions of the weather in the market itself. For instance, I have known tomatoes to bring in the New York market in April five and six dollars a box, when at even date the next year they would not bring more than $1.50, and $2.00 because——

Commissioner Prouty: Why was that?

Mr. Burr: Well, it is explained to the grower that when it
1557 is cold and disagreeable weather in the north, people do not crave the early green vegetables like they do when the weather is warmer and pleasanter, and that it fluctuates some on that account as well as on the supply itself.

Commissioner Prouty: So that when the sun shines, a man thinks of his garden, even if he does not have anything in it?

Mr. Burr: I think that the two have a bearing on what the market will pay.

Commissioner Prouty: What vegetables are produced in southern Florida in considerable quantities besides tomatoes?

Mr Burr: Beans—you are not confining me now to the east coast?

Commissioner Prouty: No, I am talking about southern Florida.

Mr. Burr: Beans, lettuce, celery, not in the very extreme part, but in what we call South Florida, cabbage and some cauliflower, but not a big movement of it. Beans and lettuce and celery would constitute the next biggest movements. There are some egg plants grown in nearly every section, but the volume of it is not large, that is as compared with tomatoes and these other crops.

Commissioner Prouty: Do you know what the land in Dade County on which these tomatoes are grown, is worth an acre?

1558 Mr. Burr: Well, I do not get down there very often now, and do not keep up with land values like I did when I was there. There has been a vast change in land values since my resi-

dence has been temporarily in Tallahassee, but they range anywhere from $20, $25 to $200, I should say.

Commissioner Prouty: Depending on what?

Mr. Burr: Depending on the quality and the location, and what it is adapted to.

Commissioner Prouty: How many *crates* of tomatoes can be loaded into a car? By the way, first let me ask you, do these tomatoes move under ventilation or refrigeration?

Mr. Burr: They move mostly under ventilation from that section, the East Coast section; there is some refrigeration movement.

Commissioner Prouty: Do they move in the winter time to destination in a box car, in a ventilated car?

Mr. Burr: Well, they get the best cars they can get for that. They try to get the felt lined cars, and I think the tendency is to use more and more of the Armour cars, or the private car line cars.

Commissioner Prouty: Those are ventilator and refrigerator cars combined?

1559 Mr. Burr: Yes, sir.

Commissioner Prouty: Like the cars in which oranges are moved from California?

Mr. Burr: Yes, sir.

Commissioner Prouty: About how many crates can be loaded into a car, one of those Armour cars?

Mr. Burr: There are some of them you can load 600 in. I have loaded 600 crates of tomatoes in a car, but I do not think they ought to be loaded that heavy.

Commissioner Prouty: About what is the practical carrying minimum?

Mr. Burr: I think 400 crates of tomatoes is a safe load.

Commissioner Prouty: What do you say would be a fair carload rate by the crate for the minimum of 400 crates?

Mr. Burr: From the Miami territory?

Commissioner Prouty: From the Miami territory.

Mr. Burr: Now I had made some figures on that in connection with the rates established on pineapples in your last orders, but I have not the figures with me; but I think it was somewhere in the neighborhood of between 15 and 16 cents from Miami in carloads.

Commissioner Prouty: What is the distance from Miami

1560 to Jacksonville?

Mr. Burr: 366 miles. And that figure I thought reasonable——

Commissioner Prouty: 20 cents a crate with a minimum of 400 crates would yield an earning of $80 a car. Can other vegetables be loaded as heavy as tomatoes?

Mr. Burr: Yes, beans—well, the bean is estimated to weigh 50 pounds, but it does not weigh it. You could put as many packages in the car.

Commissioner Prouty: These rates are all by the package, are they not?

Mr. Burr: Yes, sir; and it would be established at 50 pounds, but the average weight would be less in beans, and I think less in lettuce than in tomatoes.

Commissioner Prouty: Can you put 400 packages of lettuce into a car safely?

Mr. Burr: I think so—well, I do not know about safely. The growers—in going around holding meetings with the growers to find out conditions in the community this past summer with reference to this business, there was considerable complaint about the minimum on lettuce and celery from the sections that are most interested in that, and I am not sure as to the minimum off-
1561 hand on lettuce, but it seems to me that they complained of the minimum being too great, and wanted about, I think it is, 300 packages.

Commissioner Prouty: What minimum, Mr. Capps, did the Commission fix for the carload in the case of lettuce?

Mr. Capps: 350 packages, 17,500 pounds.

Commissioner Prouty: Under ventilation?

Mr. Capps: No, under refrigeration.

Commissioner Prouty: Under refrigeration?

Mr. Capps: There is no movement of lettuce except under refrigeration.

Commissioner Prouty: Did we fix any minimum in the case of tomatoes?

Mr. Capps: 400 crates.

Mr. Chase: 420 crates.

Commissioner Prouty: What in case of beans, Mr. Chase?

Mr. Chase: I think beans n. o. s. was the same minimum.

Mr. Capps: We fixed two.

Mr. Chase: One under refrigeration, and one under ventilation.

Mr. Capps: Yes.

Commissioner Prouty: And the minimum under refrigeration was 350 crates?

Mr. Capps: Yes.

1562 Commissioner Prouty: And 420 under ventilation?

Mr. Chase: Yes, and that was to the eastern market, in that eastern rate case.

Commissioner Prouty: What was the minimum fixed to the Ohio River?

Mr. Chase: The same applied under refrigeration, but under ventilation I think it was 420 crates, 24,000 pounds—400 up to the Ohio River.

Mr. Burr: Were you through with your questions, Mr. Commissioner?

Commissioner Prouty: Yes.

Mr. Burr: In further answer to the question which was asked me by Mr. Boggs, I will say so far as the question of the Railroad Commission of Florida approving the present fruit and vegetable rates from East Coast shipping points to Florida base points is concerned, that Mr. Beckwith's statement a while ago, in reference to that is wrong. The past year the Florida Commission had up with the East Coast officials the question of the reduction of their class rates and their local fruit and vegetable rates between stations in Florida, strictly state commerce, and we suggested in our conferences with

them, that they apply the table of local rates charged by
1563 the Atlantic Coast Line and the Seaboard Air Line in Florida; and in fact, all other railroads in Florida, for a local movement, and it was found in looking over the interstate rates that he has made on fruits and vegetables, that for a distance say from Jacksonville to Miami, his interstate rate was only one cent higher than the local rate which we suggested. He said that he had put these interstate rates in, that he would not want to have his local rate lower than his interstate rate, and that he did not believe the Interstate Commerce Commission would stand for it. The interstate rates were not under consideration. He says that we approved them, and I understand the answer in this case says that we approved them. Now, what we did say and did approve was that we adopted that as the state rate. There was moved during the year 1910, and I have it from Mr. Beckwith, taken from the books, only a movement of 25,000 and a few hundred packages northbound on the entire East Coast Railroad, of fruits and vegetables l. c. l.

Mr. Beckwith: You mean to Jacksonville local?

Mr. Burr: The rates we were considering could not have been the ones he says we approved.

Mr. Beckwith: You misunderstood me——

Mr. Burr: I am making the statement, and you can answer
1564 it after a while, Mr. Beckwith. Now, then, Mr. Beckwith says we approved them in this way. We did, and I made the statement myself, I do not know that any other member of the Commission did, but they were all present, and heard the statement; in arguing with Mr. Beckwith to adopt certain figures for his local rates on certain classes and on local fruits and vegetables, I said, "Take this rate, this will give you a rate that I would consider would be reasonable for some time, and we can feel like your rates will not be disturbed again in a considerable time".

Commissioner Prouty: What is that rate?

Mr. Burr: And that is what we approved. The interstate rate was not under consideration. It was not the intention of my remark then to convey to his mind that we were approving the interstate rate. If we had, it has only been a few months ago, and we probably would not have been in this case now, because just at that time we had petitions from the East Coast Fruit & Vegetable Association to take up these interstate rates with the Interstate Commerce Commission. We did not go to that extent at that time, because Mr. Boggs had filed his intervention in the old case which you had, and afterwards we intervened, so it was not necessary for us to
1565 take it up, but we were considering it at the same time we considered the rates of the Atlantic Coast Line and the Seaboard Air Line in Florida. We held meetings all over this state in the fruit and vegetable territory, to inform ourselves upon the conditions existing.

1566 Commissioner Prouty: What is the local rate on the Florida East Coast per crate for a distance of 350 miles from the Miami territory say.

Mr. Burr: From the Miami territory it is 26 cents, I think, off hand.

Mr. Beckwith: 25 cents.

Mr. Burr: 25 cents?

Commissioner Prouty: Less than carload.

Mr. Beckwith: Less than carload 26 cents.

Commissioner Prouty: And carloads?

Mr. Beckwith: 23 cents.

Commissioner Prouty: And less than carload 26 cents and carload 23 cents?

Mr. Beckwith: Yes.

Mr. Prouty: The minimum is how much?

Mr. Beckwith: 400 crates on vegetables.

Commissioner Prouty: Mr. Burr, do you know of any reason why the rate mile for mile should differ on these three different systems? The Atlantic Coast Line, Seaboard Air Line and the Florida East Coast Railway in Florida from point of production to the base point?

Mr. Burr: No, sir, I do not.

1567 I would like to explain that: They have differed, the Commission has recognized that there ought to be a difference in the past. They have been allowed, speaking of all their rates now, class rates, that were higher than the Seaboard or Atlantic Coast Line. It has been that way for a good many years until the readjustment, and that was done because it was a newer line, it had not as old settlements on it, and it was undergoing development and the commission had always viewed it that they were entitled to a higher rate. But it is our judgment now that the development has reached the state when on this product at least, and the production of this product, there should be no difference, and the rate which has been made up by the commission and suggested in this petition to you on the Atlantic Coast Line and Seaboard Air Line, are about in line with what we had in mind for the Florida East Coast Railway. Now then the local rates which I refer to as being a little bit higher on the Atlantic Coast Line and the Seaboard Air Line, that is they differ one cent in 360 miles and make it a little higher, so to explain that difference in making the answer that I did, I will say that that is the result of what you might say is compromise with the traffic officials, to get in the whole scale that we have considered.

1568 The rates that were given them on class rates are about the same or are the same as the Atlantic Coast Line maximum rates allowed by the commission, except with the exception of Class N and Class P; there is a slight reduction in Class P, but they have a higher class P than the Atlantic Coast Line and the Seaboard.

Commissioner Prouty: What does that cover.

Mr. Burr: Brick, lime, lath, nineteen or twenty articles, carload rate; and Class N covers live stock, mixed cars of livestock and household goods. The old rates that they have had for a number of years we let them keep on that particular class so with these exceptions the tariff is the same as the Atlantic Coast Line and the Seaboard.

Commissioner Prouty: Have you any further questions, Mr. Boggs?

Mr. Boggs: In 1897 up to 1902 is it not a fact that the citrous industry was still suffering very much from the results of the great freeze of 1895?

Mr. Burr: It was through the penisula of Florida but not in the Miami territory that I was discussing when I answered Mr. Prouty's question. The orange trees were not killed around Miami, and hardly in Dade County that I know of, what few trees were
1569 there.

Mr. Boggs: But the movement from that southern territory that was unaffected by the freeze, had not commenced to any appreciable extent at that time?

Mr. Burr: No, there was no orange production on the East Coast to amount to anything below the Indian River country.

Mr. Boggs: Do you know whether or not a large percentage of the groves on that southern end of the peninsula now have reached their maximum bearing period?

Mr. Burr: I am not sure as to the percentage. There are some groves that have perhaps reached their maximum bearing capacity, but as to the percentage that have done so I would not be able to tell you.

Mr. Boggs: Do you know whether or not there are a very large number of young groves there?

Mr. Burr: There are a good many young groves; yes, sir.

Mr. Boggs: Is it not a fact that the citrous industry in Dade County has come into existence and that the groves have practically all been planted within the last twelve years?

Mr. Burr: Practically all, yes, sir.

Mr. Boggs: How is it you did not mention peppers in your testimony a while ago? Is there not a considerable movement
1570 of peppers?

Mr. Burr: There are a good many peppers grown, but my answer was as to a question as to the vegetables that move in great quantities. There are a good many peppers grown, but taking it as a whole, I do not think it constitutes any great big tonnage.

Commissioner Prouty: Are they shipped in 50 pound crates?

Mr. Burr: They are usually shipped in the tomato carriers, yes, sir.

Mr. Boggs: How does their weight compare with that of tomatoes in the same carrier?

Mr. Burr: I do not imagine that it will average much more than half or half of the weight.

Commissioner Prouty: How is cabbage shipped?

Mr. Burr: It is shipped in barrels, barrel crates, more in barrel crates than in barrels, because the crates are easier to get.

Commissioner Prouty: Weighing how much?

Mr. Burr: Well, under the vegetable estimate we have estimated 100 pounds; they will probably weigh 120 pounds.

Commissioner Prouty: Twice the ordinary crates?

1571 Mr. Burr: It takes what we call a double V crate; it holds a barrel, its inside capacity.

Mr. Boggs: That is all.

Mr. Massey: Is it your wish that I should examine Mr. Burr now while he is on the stand with regard to the other two railroads?

Commissioner Prouty: I think so. Mr. Stenographer, you may treat this record as taken in both cases and furnish at the expense of the commission one copy to Mr. Boggs and another copy to Mr. Massey, and for the defendant one copy to Mr. St. Clair-Abrams, and another copy to Mr. Moore.

Mr. Massey: You have described the manner in which the base point tariff was prescribed or suggested by your commission to the Florida East Coast Railroad. Please do the same in regard to the base point rates on the Atlantic Coast Line and the Seaboard Air Line.

Mr. Burr: The Railroad Commission of Florida has been asked by growers to obtain some reduction on the fruits and vegetables to the base points as stated in the former statement I have made here,
and the matter had been considered by the State Railroad
1572 Commission, as shown by the record, and from which I have considerable knowledge from talking with members of the commission that remained members after I became a member prior to my going on the board. They considered these rates for some time, extending I should say over a year.

Mr. Massey: That is all of record in your office, is it not?

Mr. Burr: Yes. And they finally made up a scale of rates such as is made up here and suggested to the Interstate Commerce Commission in this hearing, and served it on the lines interested, fixing a time at which they would hear them. This hearing came off on the 1st day of October 1902.

Mr. Massey: Did you take part in that hearing?

Mr. Burr: I did. I have not participated in the preparation of the rates suggested, but there was a vacancy occurred on the railroad commission just at that time, and I had already been nominated for the office and the Governor in filling the vacancy appointed me prior to my regular term that I was elected for, and it was the first day's work that I ever did on the commission. On October 1st, 1902, I took the oath of office and went right into this hearing, and that is the hearing with the Atlantic Coast Line and
the Seaboard Air Line that I am referring to now. The
1573 East Coast hearing was disposed of before I went there, in September. I might read an extract here from the minutes of October 1st, 1902:

"TALLAHASSEE, WEDNESDAY, *Oct.* 1, 1902.

"This being date appointed for hearing in the matter of fruit and vegetable rates for the Atlantic Coast Line, Seaboard Air Line, Gainesville & Gulf, Tavares & Gulf and Jacksonville & Southwestern railroads; there were present and representing the roads: Chas. Capps, Gen'l Frt. Agt., S. A. L.; John Henderson, counsel for S. A. L.; E. D. Kyle, A. G. F. A., S. A. L., T. M. Emmerson, T. M., L.; E. D. Kyle, A. G. F. A., S. A. L., T. M. Emmerson, T. M., A. C. L.; H. M. Emmerson, G. F. A., A. C. L.; J. M. Cutler, G. F. A., G. S. & F.; Geo. P. Raney, J. P. Beckwith, T. M., F. R. C. Ry.;

L. E. Barker, T. M., G. & G.; and James Menzies, G. F. A., 2 Division, A. C. L.

"The Chairman laid the question of fruit and vegetable rates before the meeting, the representatives of the different lines present discussed the subject at length, urging that the rates should not be reduced on their respective roads, they asked that they be allowed further time to consider the rates. This request was refused by the Commission.

"The representatives of the A. C. L. then went over in detail the rates as they effected that line. After which the Commissioners prescribed the following fruit and vegetable rates for the
1574 use of the A. C. L. from stations in Florida to Jacksonville, Gainesville and High Springs, Fla., when destined to points north and beyond. Effective Nov. 1, 1902."

Commissioner Prouty: And those are the rates which are still in effect, are they?

Mr. Burr: Yes, sir, on those lines.

Com'r Prouty: And those are the rates which were approved by this commission in this case?

Mr. Burr: You mean the Interstate Commerce Commission?

Commissioner Prouty: The Interstate Commerce Commission.

Mr. Burr: Yes, sir, in a former opinion. Those rates as arrived at and adopted were the result of compromise, the result of agreement. As indicated in that minute, Mr. Emmerson took the matter up first. We took it up with the Atlantic Coast Line first and we spent an entire day, and I think into the night checking those rates with Mr. Emmerson.—the two Mr. Emmersons.

Mr. Massey: Who did they represent?

Mr. Burr: The Atlantic Coast Line; one is the President today. Well, I might say we gave and took. Mr. Emmerson would strike a certain territory and say "Now you are asking us for too
1575 much in that place and I suggest so and so," and we would adopt his suggestions in some instances, or we would get a little better figure, and that is the way that tariff was arrived at. As the result of that method, however, of agreeing to a tariff, the tariff was badly out of line when it was finished. It had dips in it. I should call them that made the alignment bad. But that is the way they were adopted and it was agreed when we went into the conference to check in his rates, that as soon as we checked in the Atlantic Coast Line rates then that the Seaboard Air Line should be checked in along the same lines, that is checking in whatever we agreed to with the Atlantic Coast Line, we would check in on the Seaboard Air Line for territories of about equal distance, as near as we could——

Commissioner Prouty: Was that tariff a distance tariff?

Mr. Burr: Well, it was made up distance being considered more, and when it was submitted to the road then it was when finally adopted, because as I say, by giving and taking, we would get the alignment out of arrangements; but mileage was considered, that

is the mileage to the territory, not strictly from one station
1576 to another, but taking a certain territory that would average a certain distance from base points. Now then the rates of the Seaboard Air Line as I say were checked in in the same manner and following that these smaller lines were checked in in the same manner. Now then just in that connection I want to explain something that I started to say at your last hearing here and Mr. Andrews objected, on account of my not being on the witness stand, and it makes the record look a little different from what it would have looked if I had been permitted to go on. The commission, or at least some members of the commission at that time believed that the power to make rates to base points on interstate rates—that they have that power. But I might say I doubted it some then and I have no doubt of it in the world now, that we do not have the power. But we were directed and are directed today by the Florida Statutes to look into these rates in and out of the state, and when we find that they are unreasonable and so forth it becomes our duty to suggest to the railroad company a change in that rate and then, if necessary, to appeal to you. That was one thing I wished to say at that time, and was stopped in the middle of it. Mr. Glasgow wanted to know how the railroad made
1577 these rates. I wanted to make that statement in further connection with the statement I have made this morning. Some of the lines deny the right of the commission at those hearings to make the rates, but they did go in and check them up and accede to them. I believe that is all answering your first general question.

Commissioner Prouty: How do the rates which you suggest in your petition, Mr. Burr, on citrus fruit compare with the rates fixed by the commission for pineapples on the Florida East Coast.

Mr. Burr: Our commission has followed the differential you made as between carloads and less than carloads on all these matters. We have endeavored to figure out as near as we could for the different territories the citrus fruit rate about in line with the rate you made on the East Coast on Pineapples. We have tried as far as we could to follow your mileage brackets. You cannot carry it out absolutely down through the peninsula of the state where there is roads like the Atlantic Coast Line, which has a perfect net work of lines running around the lake region, and if you follow it all around lake shores and in every direction you would ruin
1578 the whole thing by applying the mileage scale to it. But the mileage scale has been considered for the particular producing territory in which certain stations would come, and as near as possible following as I say, the mileage you have adopted on the other line.

Commissioner Prouty: You mean to establish a distance tariff would give one locality an advantage over another?

Mr. Burr: Well, as a general proposition I am a believer in a tariff made according to distance, but what I mean, you take and draw an air line to Jacksonville, or as near as it is practicable to make it, and you would get one station a great many miles farther

from Jacksonville than another one an equal distance by an air line, because these branches run around through what we call the lake region in Florida, and we did not think it was fair for a man living here on this side of the lake to charge him more than a man living on this side of the lake, both of them being about the same distance from Jacksonville.

Commissioner Prouty: Why not, if the railroad has to haul his traffic farther?

Mr. Burr: Because in making the rate for the two places
1579 we have considered that we have given this one enough higher—that the rate for the distance that this near one takes is enough greater compensation to make up for a lesser rate around there, and still to put the stations in that locality on a level bottom.

Mr. Massey: The Florida Railroad Commission has presented here to the Interstate Commerce Commission in this proceeding a revised tariff which in their judgment ought to be put in to base points on fruits and vegetables. Please state why the Florida Railroad Commission at this time thinks that the old tariff of 1902 ought to be reduced to the figures named in the tariff in this proceeding.

Mr. Burr: For the same reasons I gave in the answer to Mr. Boggs.

Commissioner Prouty: On the East Coast rate. The rates established then were on a very small movement of both citrus fruits and vegetables as compared with the increased production since.

Mr. Massey: Speaking now of citrus fruits, state whether or not at the time the tariff was adopted or prescribed in 1902, the citrus industry throughout the peninsula generally was still suffering from the results of the freezes of 1894 and 1895?

1580 Mr. Burr: That was—did you say vegetables?

Mr. Massey: No, citrus fruits.

Mr. Burr: Citrus fruits, it was.

Mr. Massey: Has the production of citrus fruits largely increased in the state since that time?

Mr. Burr: It has.

Mr. Massey: Whereas the increase in citrus fruits on the one hand and on vegetables on the other hand has taken place, at the old centres of the industry or at new and more distant centres?

Mr. Burr: The great volume of the increase has been at distant points, more distant than formerly. The increase in citrus fruits, has been the largest, I am quite sure, and possibly the average longest haul, in counties——

Mr. Moore: Have you any figures on that?

Mr. Burr: I have not any figures, but I am speaking from a long acquaintance.

Mr. Moore: I asked you because I think we have some, and I wanted it as definitely as you could make it.

Mr. Burr: I wish I had some figures, but I am basing my
1581 answer upon observation and being frequently over the state.

I think from De Soto County, the increase possibly there since what is known as the freeze of 1894 and 1895 has probably been greater than any other county in the state. You asked me if I had

any figures. I have some figures. They are clippings from a newspaper and I would naturally feel a little timid in offering those figures, because I do not know what paper they came from, and they may have been prepared sort of like a statement that appeared in a certain daily here last Thursday morning supposed to be the proceedings of an examination before Mr. Hillyer of the Interstate Commerce Commission, as a report of the hearing that day, when the newspaper did not have a reporter in the room all day; therefore I am a little uneasy to pull those figures. I don't know how reliable they are. That goes back to 1894, down to the last crop. If you want them for what they are worth I will bring them out.

Mr. Massey: I am like the witness, I am rather timid about offering that sort of evidence myself, unless the commissioner desires to receive it.

Commissioner Prouty: Just what in your opinion, Mr. Massey, would be the bearing of the testimony.

1582 Mr. Massey: These figures were nothing in the world except——

Mr. Prouty: Well, suppose they were accurate, just what would be the bearing of the testimony?

Mr. Massey: Nothing in the world except to show the increased shipments, and increased crops. It runs from 75,000, something like that, at that time, to something about six million boxes last year.

Mr. Burr: That is citrus fruit.

Mr. Moore: If that is all, I am not interested.

Mr. Massey: No, I do not think you are.

Mr. Moore: I thought he was getting at the matter of the lengthening of the haul and the increase in the total revenue and so forth and I was interested in that and I have some data on that point.

Mr. Burr: Well, I stated before I believe, that the greater increase has been from greater distances than were the centers of production before the big freeze. For instance Marion County——

Commissioner Prouty: I think the other case showed that, that the orange production had been moving south, and it is pretty evident too that the greatest development in the production of vegetables is to the south, that is where you produce vegetables

1583 to the greatest profit, because that is where you obtain the exclusive market.

Mr. Massey: I think that is all for the present.

Commissioner Prouty: Mr. St. Clair-Abrams, will you examine.

Cross-examination:

Mr. St. Clair-Abrams: When Mr. Beckwith and you were discussing and adopting the tariff, did not he state to you that the rates then agreed upon would apply to both interstate and intrastate business?

Mr. Burr: He stated that he already had this rate in effect for interstate movement, and that he did not want to adopt a lower rate for intrastate movement than he was carrying for interstate

movement, because he did not think the Interstate Commerce Commission would stand for it.

Mr. St. Clair-Abrams: But what I mean is this: Did he not advise you of the fact that the tariff then established would apply to both interstate and intrastate business?

Mr. Burr: Major St. Clair-Abrams, the rates being the same, it would naturally be that way, but at the same time the commission did not approve anything in reference to interstate rates.

1584 Mr. St. Clair-Abrams: Now did you so tell him during those conferences, did you advise him you had not approved this interstate rate.

Mr. Burr: It was not before us for approval.

Mr. St. Clair-Abrams: Under the statute of this state were you not required as you have stated, to consider interstate as well as intrastate rates?

Mr. Burr: We are required under the statute, but the statute does not say we shall inquire into it at any particular time, and we were not inquiring into it at that time.

Mr. St. Clair-Abrams: Now Mr. Burr, from what source do you get your estimate of 10,000 carloads of tomatoes for the present crop?

Mr. Burr: My statement in that connection was that it was estimated by growers, that is a general statement; I have no accurate figures, but it is a statement of growers down in Dade County, who believe in their judgment that that will be the movement.

Mr. St. Clair-Abrams: Have you received any information as to the number of acres planted in tomatoes?

Mr. Burr: I could not tell you the exact acreage planted by Dade County. It is enormous.

1585 Mr. St. Clair-Abrams: About how many, estimate it?

Mr. Burr: I should say, guessing at it, that is all it is, that there are about—these acres were not planted you understand, when I held my investigation down there, but they have been planted since—I should say there must be in the neighborhood of 7,000 acres of vegetables in what I would call Dade County, and I mean old Dade County.

Mr. Massey: Including what counties at present?

Mr. Burr: Palm Beach and Dade.

Mr. St. Clair-Abrams: Have you investigated as to what the actual experience has shown to be the number—the average number of crates to the acre produced in Dade County?

Mr. Burr: Oh, I think it is generally conceded that taking the whole crop, taking the failures and successes and putting them together, that 200 crates to the acre is a conservative estimate.

Mr. St. Clair-Abrams: Is it not a fact that it has averaged about 200 crates to the acre?

Mr. Burr: I do not know that it is a fact. I say that I think it is a conservative figure.

Mr. St. Clair-Abrams: Well, take 7,000 acres; how many

1586 crates would the average be to the car?

Com'r Prouty: Four hundred he said; that would be 3500 cars.

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Mr. St. Clair-Abrams: I was about to bring that out. Therefore are you not mistaken as to the estimate of 10,000 cars of tomatoes coming off of 7,000 acres of land.

Mr. Burr: I have not stated yet that that was an accurate estimate. I stated how I made that statement. The growers in that county have been estimating it at that.

Mr. St. Clair-Abrams: But you stated here to the Commissioner——

Commissioner Prouty: What is the largest crop ever shipped from there of tomatoes, do you know how many cars?

Mr. Burr: No, sir, I have not that information.

Mr. Beckwith: I can answer it.

Commissioner Prouty: How much.

Mr. Beckwith: 2,100,000 crates, about 5,000 cars. That was for the season of 1910.

Mr. St. Clair-Abrams: Mr. Burr, in regard to Florida shipping tomatoes in April, is it not a fact that that depends practically on whether there has been a failure by freeze or otherwise in states north of us?

Mr. Burr: No, I think Dade County could ship all through
1587 April so far as competition with the same production in the states north of us.

Mr. St. Clair-Abrams: The cars used you say are either ventilator cars or refrigerator cars. Are they not a special car that have to be used for transporting vegetables and fruit?

Mr. Burr: I have seen a very ordinary car used for the shipment of tomatoes. It is the desire of the grower and I presume the railroad company to give them as good a car as they can get. As I stated a while ago we wanted felt lined vents, and that the idea was growing to use even a better car than that, to use the Armour or fruit growers' express line cars, whatever you might call them.

Mr. St. Clair-Abrams: Don't you know that the East Coast Railway secures these cars for the shippers, rents them and pays the rent itself without making any extra charge to the grower or shipper?

Mr. Burr: I do not know what the East Coast Railroad does with reference to that. All lines have to get them from private car lines, or that is that particular car.

Commissioner Prouty: What rent do you pay, anything more than mileage?

1588 Mr. St. Clair-Abrams: Sometimes per diem and sometimes mileage.

Mr. Burr: I presume the other lines would have to pay the same.

Mr. St. Clair-Abrams: Mileage on private cars I am told.

Commissioner Prouty: How much, ¾ of a cent?

Mr. Beckwith: Yes.

Commissioner Prouty: Both ways?

Mr. Beckwith: Yes.

Mr. St. Clair-Abrams: Now taking up these rates proposed as shown on this sheet——

Commissioner Prouty: Do you want to file this as an exhibit?

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Mr. St. Clair-Abrams: Yes.

(The paper so offered and identified was received in evidence and thereupon marked Defendants' Exhibit 1 (Witness Burr), received in evidence March 2, 1911, and is attached hereto.)

Mr. St. Clair-Abrams: Is it not a fact that in 1902 there was a very heavy reduction made in the rates on citrus fruits and vegetables on distances from 200 miles and longer than had previously existed.

Mr. Burr: It is true as I have already testified that the reduction was made effective September 1st, 1902 on the East Coast.

1589 Mr. St. Clair-Abrams: I am speaking now specifically on the East Coast Railroad.

Mr. Burr: Yes. That is you say a large reduction, I do not know what you mean; the reduction was about from one cent to five cents; that is my recollection, from one to five cents.

Mr. St. Clair-Abrams: Six cents I find here.

Mr. Burr: Well, below Miami it would be a little greater; it would be about six.

Commissioner Prouty: How far is it from here to Miami?

Mr. St. Clair-Abrams: 366 miles.

Commissioner Prouty: Over how long a distance do these most distant fruit and vegetables move, what is the longest haul?

Mr. Beckwith: 400 miles is our longest haul.

Commissioner Prouty: 400 miles includes everything?

Mr. Beckwith: Yes.

Commissioner Prouty: So you get some 40 miles below Miami?

Mr. Beckwith: Yes, or thirty miles below Miami.

Mr. St. Clair-Abrams: Now I find in this rate sheet carload lots and less than carload lots voluntarily established by the East Coast in 1910 and now in force, that the carload rates were reduced

1590 for 400 miles from 1 to 12 cents a crate from what was established in 1902. Is that correct?

Mr. Burr: I do not know whether it is correct or not, without the rates before me. I have not given them and I am not trying to carry them in my mind. There was a reduction in rate, I admit that, I know that the rate was reduced.

Mr. St. Clair-Abrams: And those are the rates now in force?

Mr. Burr: I presume they are; that is my understanding, that they are in force.

Mr. St. Clair-Abrams: Going back Mr. Burr, to this matter which was brought before you in September, I call your attention to order No. 317, of which I have a copy here, and to this language in the order: After providing for reductions you say "and should also prescribe for state shipments of fruits and vegetables in both directions the rate now in effect for fruits and vegetables shipped from points of origin to Florida base points for interstate traffic, and that an order should be made that such rates should go into effect on November 1st, 1910." Is that correct?

Mr. Burr: I presume it is.

Mr. St. Clair-Abrams: This is I think the original order served upon us.

1591 Mr. Massey: The original order is on file in the office of the commission.

Mr. Burr: It sounds all right anyhow, whether it is the original or a copy.

Mr. St. Clair-Abrams: Then you did have before you under consideration the interstate rate when you made that order, did you not?

Mr. Burr: No, sir; I stated in answer to Mr. Prouty that we adopted for your local fruit and vegetable rates the rate which you had in effect at that time for interstate movements, and it is described in that order by a reference to those rates, not to establish what they were.

Mr. St. Clair-Abrams: Is it not a fact, Mr. Burr, that the intrastate traffic in fruit and vegetables on the East Coast Railroad is very small as compared with the interstate traffic?

Mr. Burr: Yes, sir; very much; it is a mere nothing as compared with the interstate. As I stated awhile ago from figures furnished me from the books in 1910 by Mr. Beckwith there were 25,000 and a few hundred packages of that kind of stuff moved northbound, and I did not say anything about south bound, but I think it

1592 was 92,000 of double V packages, moved southbound, produce of all kinds, taking the same rates.

Mr. St. Clair-Abrams: Then practically the intrastate traffic is nominal compared with the interstate traffic.

Mr. Burr: Well, if we put it together there is over 92,000 Double V packages, these are barrel packages, and we will say that is twice that many crates together with 25,000 north bound, and we have something over 200,000 crates moved north and southbound during the year, but that would be a small movement in comparison with the interstate vegetable and fruit movement.

Mr. St. Clair-Abrams: Less than ten per cent, is it not?

Mr. Burr: I do not know about that, but it is a small proportion.

Mr. St. Clair-Abrams: In considering freight rates on the line of this road, are we not to take into consideration under the statute the condition of the road, its general situation.

Mr. Burr: Of course we have got to take every angle of the situation.

Mr. St. Clair-Abrams: At the time this reduction was made in 1902, Mr. Burr, did not the annual reports of the Florida East Coast Railway, sworn to, show a deficit every year.

Mr. Burr: At the time what was made?

1593 Mr. St. Clair-Abrams: At the time this first reduction was made in 1902, did not every annual report of the Florida East Coast Railway show a heavy deficit?

Mr. Burr: Well, I do not know, I do not remember off hand what it showed that year. The reports have generally shown deficits, I think.

Mr. St. Clair-Abrams: Can you state to the Commissioner when was the first year the Florida East Coast Railroad showed earning capacity to pay its fixed charges.

Mr. Burr: According to its reports?

Mr. St. Clair-Abrams: Yes, the reports are sworn to are they not?

Mr. Burr: Yes. I think, Major, the year ending June 30, 1909, and then for 1910 again. In other words, the last two reports I think. I am not positive about that.

Mr. St. Clair-Abrams: Is it not a fact that those are the only two reports in the entire history of the road that showed it as earning its fixed charges, only two years when it showed a profit.

Mr. Burr: I presume that the report states that, yes.

Mr. St. Clair-Abrams: Yes, have you ever examined to see whether or not those reports stated the truth?

1594 Mr. Burr: What is that?

Mr. St. Clair-Abrams: Have you ever examined to see whether or not those sworn reports told the truth?

Mr. Burr: The railroad commission has had some experts examine the books of the East Coast R. R. Co., which they do not care to go into at this time.

Mr. St. Clair-Abrams: But I will ask you, Mr. Commissioner, whether or not if those sworn reports had been false, would it not have been your duty to take action.

Commissioner Prouty: Now——

Mr. Burr: Mr. Prouty, I think I can answer that question and relieve the whole situation. The information obtained by the railroad commission from that examination is to be used in a pending law suit with your line, and I do not consider that it would be proper for me to discuss what we found out from that audit, or anything about it in this case.

Commissioner Prouty: While we shall of course consider any testimony which either side sees fit to introduce as to the financial condition of your road, I do not think it will be much considered and have much influence in affecting our conclusion as to any

1595 changes in these rates. We have already *already* said that generally speaking your rates in any quantity lots could not be regarded as much excessive. We did think when we came to examine these pineapple rates that your long distance rates were too high in comparison with your short distance rates, and we did think that a carload rate ought to be established and I expect we may arrive at the same conclusion with reference to the vegetable rate. But I do not think we shall undertake to determine whether your road is earning too much or too little. We shall try to find out if we can what is reasonable under all the circumstances, taking the general situation down here. Now for example: You move from four to five or six thousand carloads of tomatoes every year. On a volume of that size would net earnings per car of from $80 to $85 be fair for your road?

Mr. St. Clair-Abrams: That would depend upon the conditions sir.

Mr. Prouty: What conditions?

Mr. St. Clair-Abrams: If the Commissioner proposes to ignore the general situation of the road as to——

Commissioner Prouty: We do not propose to ignore the general

situation of the road. We have already looked into the gen-
1596 eral situation of the road. But you cannot vary your rate from year to year as there may be a short crop or long crop and as your earnings may go down or may go up. We have been told within the last six months by every railroad man in this country that a railroad rate could not be made by taking what it cost to build a road and figuring it out on that basis, and that we must determine in a general way what was a reasonable rate, and while we did not accept that theory because that question was not presented to us in that view, still it seems to me that we have got to try to get at a reasonable rate and fix it and keep it in. We are not going to reduce your rate every time these shippers come to us and say we have multiplied our production up to the limit, and we — making no money, and we are not going to reduce your rate on that theory. But we want to fix a reasonable rate here and leave that rate in effect, and if we are going to do that we cannot be guided by the financial results to you as of today. Because if we fix that rate according to your financial necessities today, when your traffic increases we must reduce the rate tomorrow.

Mr. St. Clair-Abrams: I admit that, but I call your attention to
1597 the fact that we have got here an estimate of five or six thousand cars one year. Like in the case of pineapples, it is a problem which might fall off, as in the pineapples for the last fiscal year, where the volume fell off from 1,034,000 to 577,000 crates.

Commissioner Prouty: I know, but these shippers claim you are carrying Cuban pineapples so cheap that they cannot raise them.

Mr. St. Clair-Abrams: It was the result of the freeze. There were 300 acres more of pineapples planted last year than the previous year.

Commissioner Prouty: Then you will get the pineapples next year, or whenever they come into bearing.

Mr. St. Clair-Abrams: Another freeze may come or a flood. The argument is purely speculative, sir, for this reason, if you will permit me. The amount of tomatoes to be shipped is entirely a problem yet.

Commissioner Prouty: Well, it seems to me you ought to be given a reasonable rate down there if you can make any money under that you ought to be allowed to make it. Your rate ought not to be reduced every time the business increases——

Mr. St. Clair-Abrams: Accepting your suggestion made last Feb-
1598 ruary, I call your attention to the reduction we made on citrus fruits and vegetables at these very points contended for——

Commissioner Prouty: Yes, I know that.

Mr. St. Clair-Abrams: Which we put into effect. Now they call for a radical rate, a still further reduction. I had understood if your Honor pleases, that the reduction in pineapples based upon the decision rendered by the commission, was on account of the peculiar existing condition of things as affecting that industry——

Commissioner Prouty: Where we held that there was no distinction between citrus fruits and pineapples, that we could not

put in a lower rate on pineapples simply because that industry was depressed, for the reason that if we did, oranges would come up presently to us and say our industry was depressed, and we would be obliged to reduce that rate also. Our first order you will remember covered both pineapples and citrus fruits, but inasmuch as you had had no hearing on the subject of citrus fruits we modified the order so that it extended only to pineapples.

Mr. St. Clair-Abrams: Yes.

Commissioner Prouty: But unless some distinction can be pointed out between citrus fruits and pineapples it seems to me we
1599 will either be obliged to raise your rate on pineapples or reduce your rate on citrus fruit.

Mr. St. Clair-Abrams: If your Honor will permit me to suggest, in that hearing was testimony permitted to be taken as to the price of pineapples and what they sold for in the market?

Commissioner Prouty: Yes.

Mr. St. Clair-Abrams: Now I do not think that any one will contend, especially on the East Coast that there is any loss to the grower of oranges, for it cannot possibly happen.

Comr. Prouty: We said in that decision that the grower used to make a very fine thing from his pineapples, that the production of pineapples had proceeded to a point where there was no profit in it, but that we could not reduce the freight rate for that reason. That is not a reason why we can reduce a rate. We have to consider what is a fair earning to your company.

Mr. St. Clair-Abrams: I submit I cannot see how a reasonable rate can be considered unless a reasonable profit is considered to the railroad——

Commissioner Prouty: You have heard of the hotel man
1600 that charged his customer $1000 for a night's lodging, and when he objected the hotel man said he was the only customer he had had during the year, and he had to make something.

Mr. St. Clair-Abrams: Yes.

Commissioner Prouty: Now a railroad cannot apply such a theory.

Mr. St. Clair-Abrams: I submit we cannot apply—here is a company which has actually invested many millions of dollars. It has for a number of years submitted to heavy loss with a view of earning something some day on that investment. Now we have just two years that we are beginning to show a very small earning and we are called upon for a still further radical reduction which would wipe out practically our capacity to earn anything, and therefore I suggest that the commission should take into consideration the existing situation and whether or not the present earnings or price is of a character to injure or depress the industry.

Commissioner Prouty: Are you willing to allow us to reduce the rates on pineapples as often as those gentlemen down there can show they are making no money?

Mr. St. Clair-Abrams: No.

Commissioner Prouty: I thought not.

1600½ Mr. St. Clair-Abrams: But they do not come here pretending not to be making any money on vegetables.

Commissioner Prouty: Well, they will within two years be here showing they do not make any money on vegetables.

Mr. St. Clair-Abrams: It is remarkable, sir, that they should continue to increase their acreage when they are losing money.

Commissioner Prouty: They will continue to increase it up to a point where they do not make very much money. That is the history of the production of oranges and vegetables and everything else everywhere.

Mr. St. Clair-Abrams: Very well, it seems to me, if you will permit me, if we are not to consider allowing this company to earn something on its investment, we have entirely misunderstood the scope of the law and the decisions of the United States Supreme Court. Here is a fact that I have called to your attention, that for the first time in the history of that road for two years last past, we have shown a profit.

Commissioner Prouty: Do you think we should allow a higher rate on your road than on the Atlantic Coast Line?

Mr. St. Clair-Abrams: Yes, and I will tell you why. You
1601 have got to take into consideration that we do not haul a bale of cotton or a pound of phosphate rock. Our production of naval stores and lumber is trivial, as compared with those other lines. We have not a pound of kaolin and all those sorts of income to the other roads give a large return of freight, and we are entirely deprived of them. Another consideration which we desire to submit to you is, we are compelled now to import nearly all our ties and pay freight to these other roads, because large sections of our road have no tie timber at all. We are compelled to use coal in the locomotives because on our long stretch of road we have no wood that we can use. The eastern lines run their lines into their own coal mines. We have to pay them freight on every ton of coal we bring into the state of Florida. The condition must be considered.

I assume, if your Honor please, that in giving a reasonable rate, you will consider the whole condition and situation.

1602 Commissioner Prouty: Certainly.

Mr. St. Clair-Abrams: Now those are the conditions. And another thing, on long stretches of our road on account of the light friable soil, our machinery is subject to greater damage. We cannot get a Car Company to guarantee on that line of road their wheels for as long a distance as they will on other roads, because of that fact. Another thing to be considered, which Mr. Parrott, who I am sorry to say is sick to-day, but will be able to be out to-morrow, will show. We have for years run that road at entirely too low a rate, and I am here to show that we are compelled now to earn more that we may put that road in a better condition. We have been fortunate, by building on and on heretofore, not to have arrived at that period which every railroad company arrives at, of practical reconstruction. We find that we must add every year so much to our work of ballasting the track to save our ties, to reduce the injury to our machinery. We are now at the point where we

are compelled to replace rails, and in the next five or six years it will take a million dollars to replace the rails.

Commissioner Prouty: What was your cost of maintenance per mile last year?

Mr. St. Clair-Abrams: I have taken report after report,
1603 and we have the most absurdly low rate. We cannot maintain it as low, if we are to keep up a first class road. I will call your attention to the estimates I have made.

Expenses per mile on the East Coast for roadway, track, bridges, trestle and culverts $476.16.

Commissioner Prouty: Is that all it was last year?

Mr. St. Clair-Abrams: That is for the year ending June 30th, 1910. On the L. & N. it was $1426, Atchison, Topeka & Santa Fe, $1795. M. K. & T., $1333. Nashville, Chattanooga & St. Louis where the mileage is about 50 or 60 more than ours, $1449, $1,000 more than ours. Chicago, Indianapolis & Louisville, $1287——

Commissioner Prouty: You need not read any more.

Mr. St. Clair-Abrams: You can take the maintenance expense and the traffic expense, and general maintenance expense, and you will find a degree of economy that we cannot possibly continue.

Commissioner Prouty: What are the gross earnings per mile from all sources between here and Miami?

Mr. St. Clair-Abrams: I cannot give it to you in that shape, because everything is included. I will call your attention to this proportion between freight and passenger earnings. For the
1604 first time for two years, our freight earnings have been getting above the passenger earnings. Our total earnings for the fiscal year ending June 30th, 1910, were $3,687,434.30, with an average of about $6,584 per mile.

Commissioner Prouty: What were your net earnings?

Mr. St. Clair-Abrams: The net earnings exclusive of taxes hire of equipment, and so forth, were $1,481,000.

Commissioner Prouty: What was your ratio of operating expenses to gross earnings, what per cent?

Mr. Beckwith: 68.89.

Mr. Boggs: 59 and something, I think.

Mr. Beckwith: The earnings per mile of road, $3,780.

Commissioner Prouty: That is net?

Mr. Beckwith: It must be. You have the figures there, Mr. St. Clair-Abrams.

Mr. St. Clair-Abrams: The net under the conditions I have stated——

Commissioner Prouty: That is above the average in the United States, I think.

Mr. St. Clair-Abrams: No, but their expenditures necessarily are much greater than ours, and we are compelled to increase them. That is the point I wish to advance to the Commission. But
1605 after deducting fixed charges, taxes, and everything, we did not have $50,000, we could not pay a solitary dividend on the stock which was purchased at par. We have no surplus; we have a deficit now of $600,000 in the matter of profit and loss deficits.

Now, Mr. Commissioner, taking these figures as the absurdly low small expense per mile as compared with the other roads, we have arrived at that point now where we are compelled to replace—this year we have to replace ten locomotives——

Commissioner Prouty: What was the cost of your maintenance of equipment per mile?

Mr. St. Clair-Abrams: $629.40, as compared with $2,967, and $1569., the lowest is the Nashville, Chattanooga & St. Louis, which is approximately the same distance with ours, $1581.11 per mile. We have arrived at that point where we cannot continue on any such basis of economy because we are practically to the point where we have to earn the money, and keep that road in proper condition.

Now, two things become inevitable, either a capitalization beyond any possible value of the property, and which the shippers ultimately have to pay, or else allow us rates to-day which will enable
1606 us to do the work and earn the very small profit we are earning on the road of 3½ per cent on twenty million dollars, and four and one half per cent on ten million dollars, and no dividends on five millions of stock bought at par. I would like Mr. Parrott who has charge of that, to explain the whole matter to your Honor, and you can see what our situation is. We have in this last reduction made, recognizing the justice of the suggestion made by your Honor after meeting in February in Washington, we have reduced and put in less-than-carload and carload rates, and we have a total reduction aggregating $192,137. And here let me call your attention to the fact that unless the business shall increase this year, if it is no more than the last year we will absolutely have another deficit this year, and if we pay the same low rate of interest we have paid, and pay no dividends, at those reductions, because in addition to these reductions, and I would like to hand over to you a copy of the figures I have been quoting from.

(The paper so offered and identified was received in evidence, and thereupon marked Defendant's Exhibit No. 2, March 2, 1911, and is attached hereto).

Mr. St. Clair-Abrams: We have now voluntarily reduced
1607 our income, as you will perceive on page 2, an aggregate of $192,137. If the reductions as sought for are granted, in addition to that, Mr. Commissioner, we have had to increase our labor the last year $144,000, making confronting us with the loss on the same business, a loss of $330,000. As you will see on page 3, if the present demand is granted it involves a total reduction of $478,562.

Commissioner Prouty: What do you mean by saying that the proposed rate would reduce your vegetable income 35 per cent?

Mr. St. Clair-Abrams: Taking the same volume that we had last year, which is the only basis we could judge by, there would be a reduction of 35 per cent as between the rates they propose, and the rates that were imposed when you reduced the rate on pineapples.

Commissioner Prouty: What rates do they propose, carloads, on vegetables, from Miami?

Mr. St. Clair-Abrams: The sate rate, as I understand it, which you have given to pineapples.

Mr. Boggs: I beg your pardon, the prayer of our petition is that the vegetable rates shall be put on an equal carload earning basis with the citrus fruit and pineapples.

Mr. St. Clair-Abrams: As you will perceive from these
1608 figures that would confront us with a reduction for the same business of $478,562. Now, Mr. Commissioner, we cannot continue to maintain this road at the same price per mile as we are now doing. We are compelled now to do the work, because in the period when we should have in years back earned enough to do that, we have been having a deficit, and now we are compelled to spend more money this year. We have just ordered ten new locomotives to replace ten which will be useless. If we are to put in more capital to buy a new locomotive every time an old one is out of use, then in time one locomotive would represent a capital of 5 or 6 locomotives, and that would be over capitalizing the road. We are compelled to earn enough money to replace a locomotive when it becomes no longer fit for use. So likewise I submit we should be allowed to earn enough money to keep our rolling stock, road-bed and everything in good condition. We cannot continue it. We have some ten or fifteen different roads here, and it is remarkable the small expense per mile we show, and we realize, and Mr. Parrott is here to explain that we must earn the money to do work which will become absolutely necessary, or after a while we will not be able to run with any safety on the road.

Commissioner Prouty: Is there some further question to
1609 be asked of Mr. Burr, Mr. Massey?

Mr. Burr: I wanted to state that I had in mind just one point. I do not think I explained how we arrived at the orange or citrus fruit rate, we will say, and the difference between the orange rate and vegetable rate.

Mr. Massey: You mean in this present proposed tariff?

Mr. Burr: Yes. We did that on the difference in weight: that is one being 50 pounds, and the other being 80 pounds, that we made an increase to the 80 pound package in proportion to the weight, and we made, I think, that result to produce about the same revenue basis per car.

Commissioner Prouty: So with a minimum of 300 boxes in the case of citrus fruit and 400 crates in the case of vegetables——

Mr. Burr: Or 420, whatever it is.

Commissioner Prouty: The revenue per car would be the same.

Mr. Burr: The revenue per car would be the same, about the same thing. It is figured that way, whatever the increase in weight is of the *ar* orange package over the vegetable package.

Commissioner Prouty: Is there something further, Mr. Massey?

Mr. Massey: No, he has not concluded the cross examination.

Mr. Moore: I want to ask something when Major St. Clair-
1610 Abrams is through.

Mr. St. Clair-Abrams: I am through.

Mr. Moore: If I understood you correctly, you said the action

of the Railroad Commission in proposing this reduced schedule of rate was with a view of reducing the transportation charges on this traffic from Florida; that complaints had been made to you, and the action of the Commission was with that purpose.

Mr. Burr: Yes, sir, we had complaints. We have petitions lodged with the Commission from every representative growing section in the State.

Mr. Moore: Did the Commission make any estimate based on the movement figures for any season of the reduction which would be affected in the transportation charges, if these schedules were adopted.

Mr. Burr: What the percentage of the reduction of the earnings would be? Is that what you mean?

Mr. Moore: You might state it that way, or take the volume of movement for any year, if you made an estimate based on the actual movement for any year.

Mr. Burr: Mr. Moore, we did not have before us the actual movement from billing. I don't suppose that anybody con-
1611 nected with this case, or the Interstate Commerce Commission itself has; nobody but the railroad company itself has access to that.

Mr. Moore: Of course we will be able to give that data. Now, as I understood, your idea was that reductions would be justified by the fact that the movement has increased so largely; is that true?

Mr. Moore: Yes, what constituted in the minds of the Commission a reasonable rate in 1902 on the movement at that time was not reasonable when applied to the increased production and movement at the time this new schedule was made up.

Mr. Moore: Now let us take an illustrative case. We will say Ocala. Do you know what the rate from Ocala was when the movement began, assuming that there was a movement in the very beginning from Ocala, that that was one of the points from which the citrus fruits started; do you know what the movement was at the outset at Ocala per box?

Mr. Burr: Prior to the construction of the Grove?

Mr. Moore: Yes.

Mr. Burr: No, sir, I do not, no.

Mr. Moore: Well, it was 25 cents per box in the beginning.

Mr. Burr: You mean the rate? You said the movement?

1612 Mr. Moore: I meant the rate. It was 25 cents per box.

Mr. Burr: I think the Commission has those tariffs, but at the same time I would not undertake to quote from them from memory.

Mr. Moore: When was the first reduction in the rate made from Ocala, was it prior to your 1902 reduction?

Mr. Burr: It is my understanding, Mr. Moore, that there was an agitation to establish a Railroad Commission in the session of the Legislature of 1897.

Mr. Moore: And that was to re-establish a Railroad Commission?

Mr. Burr: Yes, there had been a Railroad Commission, and it had been out of commission for about four years.

Mr. Moore: There had been a Railroad Commission as early as 1887, and this proposition you are speaking of was for its re-establishment?

Mr. Burr: There was a Railroad Commission that existed for about four years. The law was repealed, and then the question was agitated for the re-establishment of a Commission, and in 1897 the Legislature did enact a law. Now, it has been my understanding—that was before my connection with the Railroad Commission—from talking to the older members of the Commission, and
1613 the gentleman who was at that time secretary to the Commission, that in anticipation of the passage of that law, the railroad companies raised their rates. That after the Commission under the law of 1897 was established, practically had those rates reinstated. You can call that a reduction if you please, but it amounted, as I understand it, to a restoration of the rates that they had been operating under.

Mr. Moore: Is not that true about merchandise, and not true about citrus fruits?

Mr. Burr: Well, I say that is my understanding, and I think it also applies to merchandise.

Mr. Moore: I will ask you if you can controvert this as a statement of the rate history, taking Ocala as an illustrative point: That the earliest rate per box on citrus fruit was 25 cents to the base points; that thereafter the rate was 16 cents to the base points, and that until the reduction in 1902 made the rate 15 cents to the base points.

Mr. Burr: Well, as I stated a while ago, I do not want to quote those figures just from memory. There is a tremendous lot of such stuff that we have to deal with, and I do not pretend to carry it in my head.

Mr. Moore: Now as against the rate of 15 cents which your
1614 Commission made in 1902, you are proposing a rate of 11 cents as the practical rate.

Mr. Burr: On what?

Mr. Moore: Citrus fruits; that is what you are proposing, are you not?

Mr. Burr: I presume so.

Mr. Moore: So you are proposing——

Mr. Burr: If you want me to confirm those figures, I will have to get my papers.

Mr. Moore: I am speaking from your schedule, and you can check me up if you find I am incorrect. So you are proposing now from this point, a rate which will be four cents less than the rate which your own Commission, after conference with the carriers in 1902 reached as the proper figure. That is correct if my figures are right.

Mr. Burr: If these figures are right, yes.

Mr. Moore: You have said your reason for doing that, and which is the only reason you have given here to-day, is that the movement has increased. I am going to ask you if I have the correct movement figures on citrus fruits for the State of Florida, for the period

during which there has been any movement. This first rate that I gave you was a rate which was in effect, of 25 cents, up to 1886.

Is there any contest of the fact that the movement in 1884-
1615 1885 was 600,000 boxes; 1886–'6, 900,000 boxes of citrus fruits.

Mr. Burr: Is there any contest?

Mr. Moore: Yes, are those figures correct so far as you have a general idea?

Mr. Burr: I do not know. They were greater earlier than that than they were earlier, there is no doubt about that, I think.

Mr. Moore: When you made your reduction in 1902, the movement had reached about the maximum which it has attained, had it not? In other words, was not the movement as early as in 1893–'4 five and a half million boxes for the State of Florida, and in the next year six million boxes for the State of Florida, and do not those figures represent approximately the maximum movement that has been attained?

Mr. Burr: The six million box crop for the year 1904–'5?

Mr. Moore: 1894–'5, and for 1893–'4, 5,500,000 boxes. What I am getting at is this, even prior to your reduction in 1902 had not the movement for the State of Florida reached its maximum? I ask that because you have given as the solitary reason for reducing these rates and the revenue of the carrier, the alleged increase of the movement.

Mr. Burr: Yes, I have given that as a reason, when we
1616 consider this industry as a whole. I have not taken Ocala to be the criterion.

Mr. Moore: But you misunderstand me, I am not talking about the movement from Ocala now, but about the movement from the State of Florida. You are talking about your entire schedules, and your entire movement, and you gave as a reason for that entire schedule that the entire movement has so largely increased.

Mr. Burr: Yes, and when I spoke of the entire movement, I meant of citrus fruits and vegetables. I cannot consider them separately, but consider them together.

Mr. Moore: Let me know—you should know, as you are Chairman of the Commission of Florida, and you are basing your action on the increase in volume of movement, what was the total movement of citrus fruits and vegetables of the State of Florida, approximately; I do not want to bind you to exact figures; we will say in 1895, and 1902 when you made the reduction, and in 1910 when you proposed to make another reduction, and a very severe one.

Mr. Burr: I do not know in number of cars or number of crates what it was in 1895, nor for either of these years, but as I stated on direct examination, a general knowledge of the situation in
1617 Florida leads me to say that there has been a big increase in production of the products in discussion here.

Mr. Moore: Now, the Seaboard Air Line, and the Atlantic Coast Line do not handle vegetables to the same extent, or to the same proportionate extent as the East Coast Line, do they?

Mr. Burr: Not to the extent that they handle from the lower East Coast. Now, then——

Mr. Moore: Do you know anything about it?

Mr. Burr: Now, then, what the proportion handled out of Florida territory by each bears to the other, I do not know.

Mr. Moore: Don't you think the Florida Commission, before they make a proposition of this sort, ought to know something definite as to the volume of movement, especially when the Railroad Commission predicates its action upon that?

Mr. Burr: Mr. Moore, the Florida Commission nor anyone else in the State of Florida has any means, or have not up to the present, of finding out how many——

Mr. Moore: Did you try to get that information from the railroad?

Mr. Burr: Let me answer the question. How many boxes
1618 of oranges and vegetables of the different kinds are shipped. There are no statistics that are really in my judgment accurate on the subject, except those that might be produced from the billing. Now, then, in presenting this proposed schedule, the Florida Commission gave the railroad companies affected an opportunity to be heard on it, and if that showing could be made, it was up to them at that time to make it. That was the tenth of November, 1910, at a meeting held in this City.

Mr. Moore: If they should show you now that you are off in your idea that the movement has increased in the way you have supposed on the Atlantic Coast Line and the Seaboard, you would say you are willing to stand by your 1902 action, would you not, in spite of breezes and disasters, of one sort and another.

Mr. Burr: If the output is smaller in 1910, or the bad season like it was in 1902, then the Railroad Commission would not be justified in saying that the rate of 1902 was an unreasonable rate today——

Mr. Moore: Do you think you——

Mr. Burr: But I do not believe that that is the case, and we did not believe that that was the case when we made up this schedule.

Mr. Moore: I am not asking you about any two years now,
1619 but about the entire period. You certainly would not fix rates every year according to the prospective movement for that year.

Mr. Burr: No, I think that the rate ought to be disturbed as little as possible, after we get a reasonable rate. I believe that is true of any rate. I agree with Commissioner Prouty's statement a while ago that we ought to arrive at a rate that we could reasonably know would remain stable for a while at least.

Mr. Moore: It seems that your Commission proposed these schedules without ever giving any preliminary notice to the railroad, and after the schedules were formulated, then you invited the railroads to come forward and be heard. That is correct, is it not?

Mr. Burr: The Commission arrived at that proposed rate, but the hearing *at* that the Railroad Commission gave to the Railroad Com-

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panies was to give them the opportunity to show to the Commission wherein these proposed rates were in error, and——

Mr. Moore: And how it would reduce their revenue, and so on?

Mr. Burr: And the answer of the railroads to the Commission in November carried no information to the Commission to con-
1620 vince them that the rates proposed were out of line.

Mr. Moore: As a matter of fact you were anxious for the railroads to give you any figures they could as to the reduction of revenue, and so forth?

Mr. Burr: The hearing was wide open for them to show anything that they could show.

Mr. Moore: As a matter of fact, when you reduced in 1902, did they not ask time to do that, and you said no.

Mr. Burr: They had already had time, but they were asking more time. The schedule that was considered in 1902 had been in the hands of the railroad for some time before the meeting of October 1st, 1902.

Mr. Moore: How long had it been in?

Mr. Burr: I am not prepared to say just how long but they had had the schedule sent to them; it was sent to them before I became connected with the Railroad Commission.

Mr. Moore: I find this extract from your report that followed that action:

"The first of October, 1902, was set for the hearing for the Atlantic Coast Line, Seaboard Air Line, Jacksonville & Southwestern, Gainesville & Gulf, and Tavares & Gulf Railroads. At the appointed time the officials of these roads appeared, and endeavored to
1621 have consideration of the matter postponed until a future date, contending they had not had sufficient time in which to ascertain how much reduction in their revenues the proposed rates would make. The application for postponement being denied, the rates were then taken up with each road separately," and so forth, and you proceed to state further that an agreement was reached, just as you stated a while ago in your examination in chief.

Mr. Burr: Well, that is the extract that I read a while ago, I think. That application for more time was asked on the day of the hearing, October first, but prior to that I do not know how long, but certainly for some time they had these rates before them to be considered on October first.

Mr. Moore: Now you as Chairman of the Railroad Commission of the State of Florida and supposed to be guarding the interests of the carriers as well as the rest of the public, said this, did you not, to Mr. Capps, when he appeared for his road before you in November, at the time when you were presenting to the companies these proposed schedules: "Now, then, so far as going into details, and showing you why we think the old rates unreasonable or discriminative, it is neither proper nor incumbent upon the Railroad Commis-
sion to go upon the stand and make this showing to you.
1622 We are here to hear from you whatever you have to say in regard to these particular rates." That was the attitude of the Commission, was it not?

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Mr. Burr: Now you are quoting from a report taken by some stenographer that Mr. Capps or the other lines had present. The Commission did not report that case, and told the railroad companies when they asked to take shorthand notes, that they were at liberty to do so, but we were not responsible for them, and I take that position now, I do not know whether they are correct or not. But I should say that the statement you have quoted there is about correct. It was not incumbent upon the Railroad Commission to make a showing to the Railroad Company, but it was their opportunity to make a showing to the Railroad Commission.

Mr. Moore: With great respect, my difficulty is this. You would not tell my clients then your reasons for doing this thing, and you will not tell us now. You give a general answer to the effect that the volume of movement has increased, and that is all we know, and when we come to investigate we find you have no figures, no definite information of any sort. That is all.

1623 Mr. Massey: In order to straighten out the matter of this hearing, inasmuch as the methods and motives of the Railroad Commission of Florida seem to be impugned as in most of these cases in which they are concerned, I want to ask you this. That proposed sheet here which is the exhibit to these petitions was made up by you as a proposed rate, was it not, before you had a hearing of the carriers on the subject.

Mr. Burr: Yes, sir, and suggested to the carriers as a rate to be established in lieu of their old rate.

Mr. Massey: In doing that you were following the Railroad Commission's law strictly, which compels you before you take any action with the Interstate Commerce Commission, to call their attention to the rates or practices, and ask them to remedy them; is not that so?

Mr. Burr: We were, except that we went further, that we gave them a hearing in Jacksonville, and as I read the law, we could have simply submitted that rate to the railroad companies without any hearing.

Mr. Massey: Undoubtedly. Now, then, you gave them a regular notice to come and discuss that proposed rate with you, did you not?

Mr. Burr: We did, prepared to stay as long as they wished us to stay.

1624 Mr. Massey: Did you or did you not come from the capitol at Tallahassee to Jacksonville for that purpose?

Mr. Burr: We did. We held a meeting in the Board of Trade in the City of Jacksonville for the convenience of the carriers and growers who might want to attend.

Mr. Massey: Did the carriers then make any attempt to show you the matters upon which you have been cross-examined by Mr. Moore?

Mr. Burr: They did not.

Mr. Massey: Let me see that statement to Mr. Capps——

Mr. St. Clair-Abrams: Pardon me one minute. The East Coast Railroad was not invited to appear at that meeting, was it?

Mr. Burr: No.

Mr. Massey: No.

Mr. Moore: We are willing to put that entire report in.
Mr. Massey: I do not care whether it goes in or not.
Mr. Moore: Then I will offer it.
Commissioner Prouty: What is it you wish to put in?
Mr. Moore: I say I am willing to put in the hearing which was had before the Railroad Commission in November, 1910, and it would be relevant, I think, in this way, although I am not at all insistent upon it, as showing that up to this time there has
1625 been no conclusion of information, and no exhibit made by the Railroad Commission, which would indicate that this action is anything but of the most arbitrary character. That we simply have thrust at us a schedule of rates that is justified by nothing that was said at the hearing, and only justified now by Mr. Burr's saying that the movement has increased. And that report contains a written protest made in behalf of the Atlantic Coast Line by Mr. Menzies, and by Mr. Capps, in behalf of the Seaboard Air Line.
Mr. St. Clair-Abrams: And I ask the record to show that we were not invited to appear at all.
Mr. Massey: No, you had nothing to do with that hearing.
Mr. St. Clair-Abrams: That is the reason we did not appear of record, though.
Mr. Burr: Let us understand that. There has not been any rate made out as in the case of the Atlantic Coast Line and the Seaboard. The Commission had not started any action against you.
Mr. St. Clair-Abrams: We were not in the case at all.
Mr. Massey: Not at all. Now, so far as the jurisdiction of the Interstate Commerce Commission is concerned, of course all this preliminary hearing in Florida has nothing to do with it. Your own rules and the law of the United States settle that ques-
1626 tion. The Railroad Commissioners of the State may come before you without any preliminary hearing. But what I do not like is the imputation put upon the Railroad Commissioners as in all these rate cases we have ever had, that for some reason they have acted improperly, and without due process of law, and all I am trying at this time is to straighten that matter out.
Commissioner Prouty: I do not think you need spend much time on that.
Mr. Massey: I think not. I agree with your Honor on that point.
Commissioner Prouty: The fact that the Railroad Commission of Florida reached a conclusion that these rates would be just and reasonable rates would not be a fact. I take it, that could properly influence the Interstate Commerce Commissioner unless supported by some testimony.
Mr. Massey: Not at all.
Commissioner Prouty: Now Mr. Burr has taken the stand this morning and stated the reasons which influenced him, and which he thinks should influence us in adopting that schedule of rates. It hardly seems to me worth while in this proceeding to go into these preliminary matters.

Mr. Massey: I think not myself, and I did not draw them
1627 out, but if the gentlemen desire that report to go in, I have no objection.

Commissioner Prouty: What Mr. Moore did was this. Mr. Burr has said that one of the considerations which especially moved him was the fact that the traffic had increased, and Mr. Moore asked him what investigation had been made to ascertain whether or not the traffic had increased, and of course his cross-examination upon that point would be material.

Mr. Massey: No doubt about it.

Mr. Burr: He asked me to confirm figures which he read off there, which I do not like to undertake to do from memory, or from his reading, and I would like to add a little further on what the Commission did to find out this. I do not know whether I have made it clear in my statement in the beginning, but just offhand I would say we held upwards of thirty meetings throughout Florida and examined growers, called meetings, and gave them notice of it, so that they could be there in their community to get information, and upon such information we were able to make this statement here of these increases from the statements made to us. Now, that was done to enlarge the information of the Commission. That was one of the ways we found these matters out and reached the conclusion that I have stated.

Mr. Moore: I am through.

Commissioner Prouty: Is there some further question to be asked Mr. Burr?

1628 Mr. Burr: I wanted to state in connection with what Mr. Massey has stated that these statements are not made when these representatives of carriers appear before the Florida Railroad Commission in session in matters over which they have jurisdiction, but it does seem that whenever a case gets before your body, or in a Federal Court, that the motive or integrity of the personnel of this Commission seems to be insinuated at at least.

Mr. Moore: Mr. Commissioner, I am not attacking the moral good faith——

Commissioner Prouty: Well, Mr. Moore——

Mr. Moore: But will you allow me to say, the intellectual integrity of the Commission. I think it is perfectly absurd that a Commission should come here with a proposition of this sort, and without any more information than these gentlemen possess.

Mr. Burr: That is another insinuation.

Mr. Moore: I do not insinuate anything. I will talk it out.

Commissioner Prouty: I want to say for Mr. Burr's consolation or satisfaction, that we have the same experience.

Mr. Moore: Let me say, Mr. Commissioner, that we never
1629 failed to get from the Interstate Commerce Commission the most satisfactory reason from their point of view for their action, and given in such fashion that they are open to examination.

Commissioner Prouty: The newspaper reports do not indicate that they satisfy anybody.

Mr. Boggs: Mr. Burr, is it not true that some time about 1900 or

1901, the Florida East Coast Railroad filed a report with your body in which they showed a very handsome net earning?

Mr. Burr: Mr. Boggs, with the noise I do not always get your question.

(Question read.)

Mr. Burr: I do not recall what the reports for that year did show.

Commissioner Prouty: Do you publish these reports, Mr. Burr?

Mr. Burr: The reports he refers to I presume are the same kind of reports made to you. They are those forms you see there (indicating).

Commissioner Prouty: You preserve them so that you have them on file?

1630 Mr. Burr: Yes, and statistical tables are made up in the annual report of the Railroad Commission, as far as they can be made from those reports. That is, we do not publish the entire report, but some statistical tables.

Commissioner Prouty: Do you require any additional information to that required by the Interstate Commerce Commission?

Mr. Burr: We have been following the form which has been furnished, and in fact we got the forms from you.

Commissioner Prouty: So their report to you would be identical to the report furnished to us?

Mr. Burr: I think so, and it is, I might say in a great many instances,—it is not true of a great many lines, but some of the lines report entire business, and it is hard to tell what the State business is from the interstate. That is a feature that we have been trying to get corrected, and I believe in the next year it will be corrected, so as to get them separate.

Commissioner Prouty: So that they will report both state and interstate?

Mr. Burr: Yes.

Mr. Boggs: We would like permission to file a statement from my reports of the Florida East Coast Railroad on file with the

1631 State Commission, showing the net earnings made by them in the years prior to the years stated by them as showing no earnings. Of course we will furnish copies.

Mr. St. Clair-Abrams: I will be willing to have every report filed with this Commission since the road was known as the East Coast Road.

Commissioner Prouty: Any reports filed with this Commission, or with the Interstate Commerce Commission, they are probably identical, might be taken as the expression of the condition of the road.

Mr. St. Clair-Abrams: I would like to take in any reports filed with the explanation which would be necessary to be given.

Commissioner Prouty: When Mr. Boggs endeavors to make any use of that information, you would have an opportunity to reply to it and explain it.

Mr. Boggs: At the time these rates of 1902 were made was the extension so called of the Florida East Coast Railroad, that is the line below Homestead in existence.

Mr. St. Clair-Abrams: I object, because the extension begins at

Miami, and there never would have been anything built to Homestead at all, but for the extension beyond Homestead. It is
1632 a separate division, salaries and everything, new crews, and everything begin at Miami.

Commissioner Prouty: Well, you make no distinction in your reports to the Interstate Commerce Commission between that division which ends at Miami, and the division beyond Miami.

Mr. St. Clair-Abrams: No, because, if your Honor please, we give the total. I do not think there should be any distinction.

Commissioner Prouty: Do you propose to introduce here any evidence which will show your operations of the line north of Miami and your operations of the line south of Miami?

Mr. St. Clair-Abrams: I am endeavoring to get it. I have not seen it. But they want from Homestead on. We cannot do that, because in our business we have our division reports——

Commissioner Prouty: Can you tell us from Miami on?

Mr. St. Clair-Abrams: I think we may have it; I do not know.

Commissioner Prouty: Would that answer your purposes, Mr. Boggs?

Mr. Boggs: No.

Commissioner Prouty: How far from Miami is Homestead?

Mr. Boggs: 28 miles. The situation is this: Our position
1633 is that that very costly and expensive construction south of Miami is a speculation which may or may not be wisely entered into, but it has doubled the total cost of the Florida East Coast Railway. It contributes nothing to the prosperity or industries of the main land of Florida, except to provide a more ready means for our competitors to get into our markets. The people along the main line will in no case profit either now or ultimately by that extension; and we contend that the fact that it is unprofitable at present, and may be unprofitable in the future, should be considered in making the rates from our territory.

Commissioner Prouty: But do not you raise that same point if you take Miami instead of Homestead as the division? Mr. St. Clair Abrams says that he cannot make the division at Homestead, because his divisional point is at Miami. Now, if you make the division at Miami, you only exclude 28 miles.

Mr. Boggs: The division made by the Railroad Commission in intrastate rates was at Homestead. They permit a different schedule of passenger rates from Homestead on, recognizing increased cost of construction down there. And as to our point here, fully half of the vegetable production of Dade County, which is the
1634 greatest vegetable producing county in the State, and probably in the United States, that half of that production is along the line between Homestead and Miami. It is the great vegetable section, and the earning which is coming to this road is in large measure earned just on that part of the main line from Homestead. The line branches out across the marsh and across the water, and across the Florida Keys; but down to Homestead its cost of construction and all other matters which should enter into rate-making are identical. Miami is absolutely an artificial point of division, and

Homestead is a logical point of division, because the railroad assumes a different character at that point.

Commissioner Prouty: But it seems Miami is a divisional point, and it would be a very difficult proposition for them to keep their accounts as to operation.

Mr. Boggs: Possibly as to cost of operation, but they could show us the amount of traffic which originates from Homestead.

Mr. St. Clair-Abrams: I know what they are trying to do. We would never have built one mile beyond Miami but for the extension to Key West, and I object to their saying that I should
1635 eliminate that portion of the extension which is profitable, and consider only that portion which they say is at present unprofitable. It would be unjust to this road, because we had no idea of building one foot beyond Miami except for the extension to Key West. If we have developed so much of the extension, it must go to the credit of the whole extension, and even beyond. The enormous number of persons who are paying to travel from Jacksonville to Miami to go on that extension, amounting to large sums of money, and increasing every year.

Commissioner Prouty: Is there any further question of Mr. Burr?

Mr. Burr: I was about to answer a question, which I will have to ask to have read.

(The question was then read as follows:)

"At the time that these rates of 1902 were made, was the extension so called on the Florida East Coast Railroad, that is the line below Homestead, in existence?"

Mr. Burr: No, sir.

Witness excused.

Whereupon at 1 o'clock P. M., a recess was taken until 2 o'clock P. M.

1636 After Recess.

Commissioner Prouty: Mr. Capps, do you know about what the average haul of your oranges is?

Mr. Capps: Not off hand, Mr. Commissioner. I think we gave some information on that line in the previous case.

Commissioner Prouty: I think you did too. I did not know but that you might remember now. Mr. Beckwith, do you know what the average haul of your oranges is?

Mr. Beckwith: About 180 miles.

Commissioner Prouty: What is the average haul of your vegetables?

Mr. Beckwith: 260 miles.

Mr. Capps: I can say that the great bulk of our oranges come from points between 250 and 200 miles.

Commissioner Prouty: Do you know how the rate prescribed by the commission for pineapples upon the Florida East Coast compares with your present rate on oranges?

Mr. Capps: The carload rate is in some cases less than our any

quantity rate, and in other cases higher. I should say as an average about a cent per package less.

Com'r Prouty: How does the any quantity rate prescribed by the commission compare at present with your any quantity
1637 rate?

Mr. Capps: The commission did not prescribe any quantity rate but carload and less than carload.

Commissioner Prouty: Well, the less than carload means any quantity.

Mr. Capps: The less than carload rate is generally less than our any quantity rate.

Commissioner Prouty: If the Commission were to prescribe a carload rate, Mr. Capps, for the movement of citrus fruits and vegetables on your line, what part of the total of the movement would probably be at the carload and what part at the less than carload rate?

Mr. Capps: In the previous case it was shown that the entire western movement was in carloads at that time, and of the eastern movement practically 90 per cent was in carloads.

Commissioner Prouty: Well, that was true of oranges but not of vegetables.

Mr. Capps: I thought you spoke of oranges.

Mr. Prouty: No, oranges, citrus fruits and vegetables.

Mr. Capps: I believe this, that with the rapidly increasing development of small farms in the state of Florida due to the great influx of settlers, that the less than carload movement of settlers
1638 is going to increase. There are a great many five, ten and twenty acre farms sold in sections of the state——

Commissioner Prouty: What has been the movement from the main points, north, since the carload rate went in?

Mr. Capps: I have not those figures prepared. That was one of the things I had in mind when I suggested we ought to have a little more time on this matter.

Mr. Beckwith: Will you allow me to make a correction. I said 260 miles was the average haul of vegetables. It is 360.

Commissioner Prouty: I thought so, and about 180 on oranges?

Mr. Beckwith: Yes, sir.

Commissioner Prouty: What is our average haul on pineapples, Mr. Beckwith?

Mr. Beckwith: 250 miles.

Commissioner Prouty: I do not quite see how it would reduce your revenue on oranges to the extent stated by you if we were to put in the pineapple rates. Those rates did not reduce your short distance rates of any account.

Mr. Beckwith: The majority of the oranges move from south of the 150 miles. The bulk of them move from the 180 mile points. For illustration, the present rate we have in now oranges in carloads from the 180 mile point is 21 cents and the
1639 pineapple rate from that point is 16 cents, but there is no business moves from there at all.

Commissioner Prouty: Where is the exhibit I had this morning?

COPY BOUND

(Papers produced.)

Mr. Beckwith: I do not think that has the pineapple rate. I can give you the orange rate.

Commissioner Prouty: Well, you had a bundle of rates just at that point that were out of line with the rates above and below.

Mr. Beckwith: On oranges we had in originally a rate for 170, 180, 190, 200 and 210 miles of 24 cents.

Commissioner Prouty: You had for 130 miles 19 cents and for 150 miles 20 cents, and then you moved up from 20 to 24 cents in ten miles.

Mr. Beckwith: No, it was 170. 160 is 20 cents.

Commissioner Prouty: The figure I have before me—yes, over 150 miles, between 150 and 160 miles was 20 cents.

Mr. Beckwith: Yes.

Commissioner Prouty: Between 160 and 170 it jumped 4 cents a box.

Mr. Beckwith: Yes.

1640 Commissioner Prouty: And ran 4 cents a box up to 210 miles.

Mr. Beckwith: Including 220 miles. In that adjustment we made in July we took out that. There is a comparison which I think it very comprehensive, that is the basis on which that tariff was constructed. The red figures are the old rates and the blue figures the ones put in effect July 1st.

Commissioner Prouty: The figures on the left hand side are the ones you have now established?

Mr. Beckwith: Yes. The figures in blue.

Commissioner Prouty: Mr. Boggs, you may proceed.

Mr. Boggs: I will ask Mr. Capps to take the stand.

CHARLES R. CAPPS, was called as a witness, and having been duly sworn, testified as follows:

Direct examination.

Mr. Boggs: Have you made any inquiry into the movement of vegetables out of the southern part of the East Coast of Florida for this year?

Mr. Capps: I was in Miami a day and a half last week. I took an automobile trip from Miami up to Ft. Lauderdale and then a trip from there out into the Everglades, the canal, and the following day I passed through that vegetable territory on train

1641 30 I believe.

Commissioner Prouty: Mr. Boggs, we are not going to change or adjust these rates with respect to any prospective shipments of this year, nor with reference to the actual shipments last year. We are not going to reconsider this question and reconsider these rates, unless we go into a comprehensive re-examination of the whole subject. We may re-align these rates on the Florida East Coast Ry. in accordance with our pineapple rate; that is something about which I express no opinion. But we are not going to be influenced by any consideration like that to which you now

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direct Mr. Capps' attention, and it is not worth while to spend any time on any testimony of that kind. In other words, whatever we do will be done rather on the record as it stands than with reference to any additional testimony.

Mr. Boggs: Our understanding was, Mr. Commissioner, especially from what was said this morning, that the commission it seems to us had very properly in deed, the idea that it should be sought to establish rates which should not apply to any one year, but should have some contemplation of the movement which should go under the rates to be established by the commission. Our sole object in introducing this testimony is to show that the increase of
1642 this movement is not small, but is simply enormous and that the tonnage which the carriers are going to have under it is colossal, and if these rates are to stand for a number of years there is a perfectly tremendous tonnage to be anticipated as moving under it, with all the benefit which that carries to the carriers, and with all the detriment which that carries on the other hand to the shippers, as making a very much larger volume of stuff to move, making it more difficult to find markets unless the rates can be adjusted. Of course we are subject to any ruling that you may make on the subject. But that was our idea in introducing this testimony, to show that that increase is not a mere small increase, but is practically a geometrical ratio of increase in this industry and that the rates are bound, if they are to move that traffic—that the rates ought to be made with reference to that volume.

Commissioner Prouty: It is only two years ago that we passed upon this question and passed upon the reasonableness of these rates, and we certainly cannot re-examine this every two years.

Mr. Boggs: We were proceeding, may it please the commission, on that last order which was made in reopening the question of fruit and vegetable rates on the coast, otherwise we should
1643 not have proceeded by supplemental petition here nor should not have undertaken anything until two years at least were up, since the former petition but the commission last spring after hearing the testimony taken in Jacksonville, entered an order opening up this question of fruit and vegetable rates.

Commissioner Prouty: Yes.

Mr. Boggs: It was not of our seeking that this matter was up for adjustment within two years after that decision was made.

Commissioner Prouty: We entered an order and disposed of that case in that order.

Mr. Boggs: The order was opening up fruit and vegetable rates on the East Coast and setting it for testimony with special reference to pineapples, and we held when it was opened to fruit and vegetables therefore the best way to get it properly disposed of was to get that fruit and vegetable rate disposed of now.

Commissioner Prouty: I think it ought to be disposed of now but I rather think it should be disposed of upon the testimony in the original record. It does not seem to me that additional
1644 testimony of this sort can have any bearing on the case.

Mr. Boggs: Then we have no further questions for Mr. Capps.

Commissioner Prouty: That is all, Mr. Capps.

(Witness excused.)

Commissioner Prouty: I may say in reference to the Florida East Coast and in reference to the order which the Commission made that we felt when we came to examine these rates that they were not altogether consistent with themselves. It seems that great quantities of vegetables from points on the Florida East Coast move longer distances, much longer distances than from the other lines, and we felt that the long distance rates on the Florida East Coast were too high in proportion to their short distance rates. It was that which influenced us very largely in striking off the former order and permitting you to ask for a revision of these rates.

Mr. Boggs: That is of course, the principal object of this petition, which seeks to parallel these other things with the pineapple rate, feeling that the movement does not cost the carriers any more and that the service is practically the same and that a parallelism might be established.

Commissioner Prouty: I think you may very well say that upon the strength of our decision as to pineapples, we ought to
1645 revise our rates on citrus fruit and that perhaps we ought to revise our rates on vegetables, but that would be not on any new record which is made, but upon the record which already exists.

Mr. Boggs: We were simply seeking—I had not intended to introduce this particular line of testimony before, but in view of what your Honor said about the probable permanency of these rates for a long time, we felt that possibly the Commission ought to be advised not only as to how rates were in 1908 when the testimony was taken in this original case, from what they are now and what changes have taken place in the meantime.

Commissioner Prouty: I think if the commission had supposed that the vegetable traffic would never be any greater than it was in 1908, it might have hesitated to hold that those rates were sufficient, but we felt that looking at the whole situation they ought to be regarded as sufficient. I presume we were influenced somewhat by the fact that those rates had been recommended by the Florida Commission, and I may say with reference to the other two cases, the Coast Line case and the Seaboard Air Line case, that if the Florida Commission desires to retry that whole question, the commission will re-examine it. But manifestly if we are to do that it
1646 must be upon an entirely different record than can be made up here today. If we are to consider that matter over again we must try to get at the bottom of it this time, and find out what these Florida roads really are earning, here in Florida, the traffic they are handling, what they have earned and what it costs them to handle the traffic and all about it. Unless the Florida commission desires to retry that question, and by that I mean to introduce new testimony, additional testimony, it seems to me that all we can do with the Seaboard Air Line case and the Atlantic Coast Line case is

to inquire whether carload rates ought to be established. The commission suggested in the original case that carload rates ought to be named for the movement of this traffic. I felt there was some doubt about it perhaps in the case of vegetables. But we had established those rates from the base point. Now I think the commission should probably establish carload rates which are less than the inequality rates by perhaps two cents a crate, and in the case of citrus fruit 3 cents a box, and if it found a case where the rate was abnormal, it would correct that rate. But I do not think that it would revise its former holding as to the general reasonableness of these
1647 less than carload rates.

Mr. Boggs: Your Honor, as to the East Coast case, we desire to put some testimony in to show the very heavy earnings of the road and the fact that it is far more able than it ever has been to carry this traffic at a reasonable rate, and that a rate which might have been reasonable for it even two years ago, in view of these recent developments in the territory would be entirely out of line now——

Commissioner Prouty: Well, now, we have a reasonable rate for the Florida East Coast, we have fixed a rate on pineapples which for 400 miles would allow what earnings per car?

Mr. Boggs: 366 miles would allow $75 per car. That is the Miami rate.

Commissioner Prouty: Now I think that rate is as low when distances are considered——

Mr. Boggs: We are not attacking that rate at all, your Honor. We are perfectly willing to have the Commission accept that and act on it as the reasonable rate.

Commissioner Prouty: I was going to say that I think that rate is as low, distance considered, as we have fixed for the movement of citrus fruit from southern California over the Santa Fe road, which has earnings much greater than the East Coast. It
1648 strikes me that that rate would be a low rate in almost any state with the earnings of the Florida East Coast road. Whether that same rate ought to be applied to oranges and vegetables, is the question which we would have to consider.

Mr. Beckwith: Excuse me for interrupting. Of course the oranges and pineaples and vegetables move from different territories and different mileage——

Commissioner Prouty: I understand, but this is true if the same quantity had moved from every station on your line it would not much change your revenue, except that the carload rate would be three cents a box less than the other rate.

Mr. Beckwith: Yes.

Commissioner Prouty: To put in the rates we established. But it so happened that you had an abnormally high rate from all those stations from which the oranges moved, and I suppose you understood that when the rates were made.

Mr. Beckwith: Yes.

Commissioner Prouty: And you had an unlawfully high rate from all this territory from which these vegetables moved, and that was

rather true of your pineapple rate, so that when we come to reduce those rates to a consistent scale of rates, it reduces your revenue materially.

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Mr. Beckwith: Yes.

Commissioner Prouty: That is because it happened that your rates were high from those stations from which the traffic came?

Mr. Beckwith: Yes, that is right.

Mr. St. Clair-Abrams: We have voluntarily reduced our rates from the principal shipping points on car loads on citrus fruits 3 cents a crate.

Mr. Beckwith: One minute; from the territory that the majority of our vegetables move from, we have made reductions in carloads from 6, 8, 11, 14 and 15 cents, is the highest reductions.

Commissioner Prouty: I know, but if your short distance rates were right before, these long distance rates were entirely out of reason.

Mr. Beckwith: The short distance rates were made as the road was built from time to time, and practically no business at this time moves from these short distance points. You take vegetables——

Commissioner Prouty: It seems to me that when you take a traffic that gives you from say 4,000 cars up, per year, it would be over 4,000 cars, and perhaps in the end there would be 10,000 cars per year of those tomatoes, now at a rate which yields you from 80 to 85 dollars a car upon a volume of traffic equal to that for a movement of 400 miles, it ought to be a pretty fair rate. What would your lumber rate yield?

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Mr. Beckwith: Take Miami for instance, lumber and brick we put at 50,00- pounds, $68.75.

Commissioner Prouty: Now you move those tomatoes just exactly as cheap and a little cheaper than you move your lumber and brick.

Mr. Beckwith: Yes. Now we have got to take into consideration, or I should think we should do it, that the vegetable and fruit traffic is about 45 per cent of our freight earnings.

Commissioner Prouty: That shows that the rate is a very important thing, and if you have a business with a volume equal to that, you should be willing to carry it at a pretty reasonable rate. You should be willing to foster that kind of business.

Mr. Beckwith: Well, it is one way business. We have to take the entire equipment first.

Commissioner Prouty: Yes, the best business in the world is one way business, and that is coal.

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Mr. Beckwith: We are to a considerable expense in gathering this business. It costs us more to do it and we get no haul north of Jacksonville.

Commissioner Prouty: I understand that.

Mr. Beckwith: It is a purely local matter with us.

Commissioner Prouty: When the carload rate is applied, the car is loaded by the shipper and unloaded by the consignee.

Mr. Beckwith: Yes, that is the reason we established the carload rating.

Commissioner Prouty: So all you do is to haul that car. It seems

to me in the conduct of a railroad business when you get $80 a car for handling a car, simply hauling a car 400 miles that ought to be pretty good business. As I have——

Mr. Beckwith: Well, if we get sufficient volume to pay our fixed charges it would be.

Commissioner Prouty: Well, ought you to——

Mr. Beckwith: I think it ought to stand its share of our expenses.

Commissioner Prouty: I think so too, assuming that you have a road there which can ever earn anything. But I think too that that road will be sometime a profitable road on rates of that
1652 kind.

Mr. Beckwith: But you take the present earnings of it, we have got operating expenses scaled down to almost the minimum. The last two years we practiced economies which have brought us down to enable us to pay interest.

Commissioner Prouty: Certainly, you cannot expect to maintain the road for $400 a mile.

Mr. Beckwith: We have to spend more money on it and have to have more earnings to enable us to do it and still pay fixed charges.

Commissioner Prouty: Well, it is already said that your fixed charges or your interest charge is very largely increased by the extensions on the Homestead, which does not yet pay although it may sometime.

Mr. Beckwith: There are 28 miles that pay very good, that produce 40 per cent of our present vegetable traffic.

Commissioner Prouty: I have not yet figured on your earnings.

Mr. Beckwith: And it was from that territory that we have recently made those heavy reductions. Take from Homestead alone on vegetables carloads we have reduced from 35 cents to 24 cents, a reduction of 11 cents, $44. a car.

1653 Commissioner Prouty: Your rate from Homestead now is what?

Mr. Beckwith: 24 cents in carload quantities on vegetables against the old rate of 35 cents prior to July 31st.

Commissioner Prouty: That would give you earnings of $96 a car from Homestead?

Mr. Beckwith: Yes.

Commissioner Prouty: The distance is how far?

Mr. Beckwith: 400 miles.

Commissioner Prouty: Well, now I had in my own mind that somewhere about 22 cents would be a fair rate there. It does not differ much from yours, the carload rate, but that is all a thing to be carefully thought of and figured on. I do not know——

Mr. Beckwith: The present rate we have got on fruits and vegetables carloads are a great deal less than we have on other commodities. Take flour, grain, fertilizer, and building material.

Commissioner Prouty: What is your rate on building material—fertilizer?

Mr. Beckwith: On fertilizer $48. a car, I mean compared with the expense of handling it.

Commissioner Prouty: I do not care about the expense of handling it now, what is the rate per ton on fertilizer?

1654 Mr. Beckwith: $2.40.

Commissioner Prouty: From Jacksonville to Homestead?

Mr. Beckwith: I am speaking of Miami.

Commissioner Prouty: $2.40. Well, that is only 12 cents per hundred pounds.

Mr. Beckwith: Yes.

Commissioner Prouty: What would your carload earnings be there?

Mr. Beckwith: $48. on 40,000 pounds.

Commissioner Prouty: Well, that is just half what you would earn on a carload of tomatoes.

Mr. Beckwith: Yes.

Commissioner Prouty: Now where you handle such an enormous volume of traffic it seems to me you ought to get down to as low a car earning basis as $80 to $86 a car. What are your average freight car mile earnings on the whole system.

Mr. Beckwith: I have not a statement of that with me.

Commissioner Prouty: If your report is here that will show. Have you your last report to the Interstate Commerce Commission here?

Mr. Beckwith: No.

Mr. Boggs: We have it here, sir.

1655 Mr. Beckwith: The average earnings per car?

Commissioner Prouty: Well, yes, what is the average earnings per car?

Mr. Beckwith: I have not got that.

Commissioner Prouty: What I wanted though was the average earnings per car mile.

Mr. Boggs: It is $480 to the west and $420 to the east.

Commissioner Prouty: You mean the minimum?

Mr. Boggs: Yes.

Mr. Beckwith: The average receipts per ton was $3.29.

Commissioner Prouty: Now your receipts per ton would be how much at 22 cents a box, say a box weighs 50 pounds, that would be 44 cents a hundred, that would be $8.80 a ton.

Mr. Beckwith: Yes.

Commissioner Prouty: But then that is an extreme haul and it is the best traffic you have got and you ought to earn much above the average on that. What is your first class merchandise say from Jacksonville to Miami?

Mr. Beckwith: It was $1.11 and we reduced it to 95 cents in November. Those merchandise rates, we made a reduction on in November of approximately 8 per cent, and a reduction in the fruit and vegetables taking the north and south bound of about

1656 15 per cent, and I figure that it produces a reduction of about $300,000 in our revenue which we have got to meet.

Commissioner Prouty: Why did you reduce your class rates?

Mr. Beckwith: We did it on account of the contentions; we tried to allay them and every one seemed to think they were too high and we thought if we were going to reduce on the fruits and vege-

tables that the merchants on their goods south bound should have some reductions, and it was done by agreement with the railroad commission. They have been after us for a good while to make reductions and adopt a standard tariff, and we agreed to do it.

Commissioner Prouty: Your rate first class to Miami is now 95 cents?

Mr. Beckwith: Yes, first class. I think it has done more to allay these contentions than anything we have done in years.

Commissioner Prouty: It does not seem to have allayed this one.

Mr. Beckwith: No, this seems to have come up, but I do not think we will ever be able to allay it.

Commissioner Prouty: I do not think you will either, but nevertheless we must try to get in here a rate which is on its face a reasonable rate and then these people will have to get along with it.

1657 Mr. Beckwith: The tariff we put in on fruits and vegetables in July, we consider about as reasonable as we could make, taking into consideration the reduction it would produce in our earnings, using 1910 as a basis, hoping that the increased crop would overcome those reductions.

Commissioner Prouty: Do you expect crops will continue to increase on your line?

Mr. Beckwith: We have been working for ten or fifteen years trying to make them increase.

Commissioner Prouty: They have increased, comparing this year with ten years ago, they have enormously increased.

Mr. Beckwith: Oh, yes.

Commissioner Prouty: And you have no doubt comparing this year with ten years hence they will enormously increase?

Mr. Beckwith: We hope they will.

Commissioner Prouty: Well, don't you expect it.

Mr. Beckwith: Yes.

Commissioner Prouty: You expect there will be a great increase in the passenger business.

Mr. Beckwith: Yes.

Commissioner Prouty: Your passenger business has in-

1658 creased since I first heard this case, has it not?

Mr. Beckwith: Yes.

Commissioner Prouty: You say you get about 3 cents a mile on this tourist passenger business?

Mr. Beckwith: Yes, sir; that is maximum. Of course the average rate is less.

Mr. St. Clair-Abrams: But a trifle over two cents?

Commissioner Prouty: Then that must be due to the fact that you make excursion rates?

Mr. Beckwith: Yes.

Mr. St. Clair-Abrams: And through rates and the like.

Commissioner Prouty: But when you carry anybody from Washington down to Palm Beach, you get practically 3 cents a mile, don't you?

Mr. Beckwith: Three cents a mile, yes, sir.

Commissioner Prouty: Well, I do not know, I thought when I

first investigated the Florida East Coast that it required considerable nerve to build that road, but I think it will pay.

Mr. Beckwith: Every one thought it required nerve, and no one thought the development would be there that we had, except one man.

1659 Mr. St. Clair-Abrams: And in considering any reduction of rates, I think there should be taken into consideration the increase in one single point, of $12,000 a month in wages alone.

Commissioner Prouty: Yes, and we should take into consideration the fact that for a great many years it has not paid. I think that should be taken into account. We should not fix a rate today simply because it would be reasonable four or five years from now, nor do I think the commission would be disposed to really reconsider what it said in the original case; but as I have already suggested, your rates have been constructed in such a way that there were abnormally high spots in them and those abnormally high spots were unquestionably just where the traffic came from.

Mr. Beckwith: We have eliminated that in this tariff.

Mr. St. Clair-Abrams: We have eliminated that by reductions of fifteen cents.

Commissioner Prouty: I think the commission must consider what it will do with those orange rates and vegetable rates, what would be a fair rate on your line. I can see that the expenses of operation on your line are probably more than the expenses of operation on the Seaboard Air Line and the Atlantic Coast

1660 Line. There are certain reasons for that. Possibly you ought to have a chance to charge a little higher rate. Your passenger rate is higher, is it not?

Mr. Beckwith: The same rate.

Commissioner Prouty: Your merchandise rate is the same?

Mr. Beckwith: Yes.

Mr. Massey: It is not the same. It is 2¾ cents on the other line and 2 cents mileage books.

Mr. Beckwith: I had overlooked that fact of the 2 cent mileage book.

Commissioner Prouty: It seems to me possibly, and quite possibly that for the present your rate might be a shade higher than the rates on these other lines.

Mr. Beckwith: I think so. We receive no revenue beyond the base points and the other lines do that are interested.

Commissioner Prouty: Well, yes, but we are considering the rate up to the base point without reference to the fact that the Atlantic Coast Line has the haul beyond.

Mr. Boggs: That leaves us somewhat uncertain as to what our course should be. I will outline briefly what we expected to prove and then if your Honor feels that it is unnecessary to do so of course we will not go any further in that line. What we ex-

1661 pected to prove was as to the question of the earnings of this railroad, that the line from Jacksonville to Homestead is earning practically all the freight earnings that are being made on the road. That that road, as already appears by evidence in this

case, cost about $12,000,000. That the earnings for this last fiscal year was about $1,400,000 odd net earnings, which would make an earning of between 11 and 12 per cent on the actual cost of that particular part of the line. The position as taken by the East Coast Railroad seems to be that they can figure out what their fixed charges are on the extension, and all, and that their rates are not unreasonable from the point of view of their revenues until the main land can earn enough and does earn enough to pay them all the fixed charges that they have accumulated on that extension, and we think that that is unfair.

And we expected to show that owing to this great growth of the business here they could still earn very heavy revenues on this main land line, far in excess of any fixed charges as well as operating expenses on the value of that particular part of the line that is doing the earning, and of course we have felt as I have stated be-
1662 fore, as to the citrus fruit rates that the adjudication in the pineapple rate was practically an adjudication in the citrus fruit rate, and that unless some exceptional reason should be shown why there should be a difference here, the citrus fruit rate ought to follow the pineapple rate. We have felt the same was true to a less extent as to vegetables. That the decision did not so absolutely fix the vegetable rate, but unless they could show that the vegetable traffic either could stand a heavier rate or cost them more to handle than a similar carload earning ought to be made there. We have not undertaken to attack or impugn or impair the orders of the commission as they have already been made in the case, but merely to harmonize these three lines of traffic, pineapple, citrus fruit and vegetables.

Now if it is the opinion of your Honor that our position is well taken there, it will be up to the carriers of course to show that some exceptional circumstances exist which justify a departure from that rule, and we are wasting our time in putting in testimony.

Commissioner Prouty: What testimony would you desire to put in?

Mr. Boggs: The earnings of the road and the fact that they
1663 secure them on the main line in Florida.

Com'r Prouty: Would you claim that until two years ago the capital of this road had received a proper return?

Mr. Boggs: It is very difficult, your Honor, to go into that point in detail. It was shown I think at the hearing in Washington that the railroad had not cost as much as its capitalization would seem to imply. In other words, that there was inflation in the capitalization, and owing to the very limited means that we have of inquiring into the bookkeeping it has been rather hard to say, but it has also been shown that that railroad has paid, if not dividends on capital stock, an item which the company calls interest on the capital stock, and which does not seem to us to be very easily differentiated from dividends, and the actual earnings even as shown by their own report on analysis for a great many years past, when you take into consideration that inflation, and take into consideration the methods of bookkeeping by means of which the interest on the capital stock

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is paid and no dividend is paid, it does appear that the road has been paying a very substantial return on the investment. Of course I do not now speak of the extension over the Keys.

1664 Mr. St. Clair-Abrams: I must protest against any attempt to separate the line from Miami to Homestead from the extension. As you are probably advised, your Honor may have been down there, the line of the extension from Miami runs along the Bay of Biscayne. Until the Act of the legislature was passed enabling the building of that extension everything from what is now the extension was hauled to Miami or brought in boats from these points on the Bay of Biscayne to Miami. There was not the slightest necessity for building one single mile of road beyond Miami, but for the building towards Key West. Now, sir, counsel have lost sight of the fact which is absolute that since the extension to Key West the business alone on the main land from Jacksonville to Miami, from passengers alone going on the extension amounted in one year to $113,000, not $1.00 of which could have been earned if there had been no extension. Last year we paid for freights on the extension $74,000, for the work itself.

Commissioner Prouty: How much has that extension cost up to the present time?

Mr. St. Clair-Abrams: About $16,000,000.

Commissioner Prouty: How much did your road cost down

1665 to Miami?

Mr. St. Clair-Abrams: It cost absolutely about $15,000,000. and something, which is called by these gentlemen interest, but not fully explained by them. There was something said about the bonds. Mr. Flagler took those bonds, they represented actual cash paid in by Mr. Flagler, and in addition to that he turned over to the road the entire terminals of Miami, large amounts of land at St. Augustine——

Commissioner Prouty: Yes, we went into all that at Washington, did we not?

Mr. St. Clair-Abrams: No, it was not explained. Now I insist if this question is to be opened up entirely, and these radical reductions are to be made, we should be afforded an opportunity of showing what the present value of our property is.

Commissioner Prouty: I do not think, Mr. St. Clair-Abrams, that we shall make reductions or decline to make the reductions from the revenue standpoint. I do not quite see how you can construct your rates on that basis, nor how we can approve or disapprove of your rates on that basis.

Mr. St. Clair-Abrams: In this way, if you will permit me?

1666 Commissioner Prouty: Yes.

Mr. St. Clair-Abrams: If counsel insist upon taking out—now for instance he wants to eliminate as part of the extension all to Homestead. Now we next strike Key Large. I understand there is a pineapple industry starting there. As soon as that becomes profitable he will come in and say we must eliminate that, and as each Key is developed——

Commissioner Prouty: That is one reason we cannot use that basis at all.

Mr. St. Clair-Abrams: Exactly, therefore I say this commission must consider the entire system——

Commissioner Prouty: We must consider the entire system but at the same time we cannot assume that there is any traffic which justifies, up to the present time, the construction of that extension.

Mr. St. Clair-Abrams: But will the commission not consider the enormous increase of business that that extension has given to the main line, which amounts to $4.00 for every one that the extension itself gets?

Commissioner Prouty: We will try to fix the reasonable rate, and if you can make your extension pay you are entitled to the
1667 benefit of it. If it does not pay the public ought not to be required to make good the loss.

Mr. St. Clair-Abrams: But if the public on the main land is getting four or five dollars for every dollar earned on the extension, will the commission say they must get that benefit and we derive no benefit from the extension at all?

Commissioner Prouty: I say I do not think the commission will undertake to settle the question which is before us on a revenue b-sis at all.

Mr. St. Clair-Abrams: Well, take it on the basis of what is existing today. We have $30,000,000 of bonds outstanding with a property whose book value is today nearly $36,000,000 as shown by our last report. We pay on $10,000,000 of that only 4½ per cent and we pay on $20,000,000 only 3½ per cent. Now you cannot borrow money in this state save in exceptional cases for less than eight per cent, that is the authorized rate, and you have to pay up to ten per cent in this state. Are we earning an unreasonable profit on that amount of outstanding obligation? Clearly not.

Another proposition to which I have called your Honor's attention is this, that the necessities of this road, and that is what I wanted proof from Mr. Parrott on, require an increase in
1668 operating expenses. Are we not to be allowed to earn that? It is for the benefit of the shipper that we shall increase these operating expenses. I told your Honor a while ago we have just ordered ten new locomotives to replace those no longer fit for use. We are obliged to earn that money. If every time a locomotive becomes unfit for use we have to put in new capital to buy another and when that is done put in new capital to buy another, in the long run one locomotive will represent a capitalization of the price of ten locomotives. We must be allowed to earn the money to replace that to prevent excessive capitalization, or if we are to take some part of the system which does not pay and eliminate that and say you will not be allowed to earn anything on that, they can go to any other part of the road—there are portions of the main line and divisions and branches that do not pay and never will pay, and yet they are necessary to the whole system.

Commissioner Prouty? Suppose it were necessary in order to pay

the interest on your bonds to charge the rate of 50 cents a box on those tomatoes, do you think that would be reasonable?

Mr. St. Clair-Abrams: You would go from one extreme to the other, if you will permit me to say? There is a limit
1669 necessarily. The question is this, where we were charging 24 cents up to the 10th of November on carload lots we have reduced it to 21 cents. 90 per cent goes in carloads. We have shown our willingness to reduce. Are we to be forced to make radical reductions which deprive the capital invested of any profit at all? Are we giving an excessive profit to that capital——

Commissioner Prouty: If you have spent down there $15,000,000 in building a piece of road which is not good for anything, is there any reason why that——

Mr. St. Clair-Abrams: No, we spent $15,000,000 on the main line to Miami, and its branches, not including the extension, represent $15,000,000.

Commissioner Prouty: You want to earn on that $15,000,000 because these tomatoes all pass over that line, but in addition to that you have built an extension which has cost you Fifteen other million. Should these tomatoes pay interest on that?

Mr. St. Clair-Abrams: We are not asking that. We are saying, give us a reasonable rate. We hold that eight per cent in Florida is a reasonable figure, that would be $1,200,000.

1670 Commissioner Prouty: You did not borrow that money in Florida, you could not borrow it in Florida. You went up to New York to get that money.

Mr. St. Clair-Abrams: No, sir, one man put it out of his pocket and has never got a dollar for it. Now shall or could those he has sold the bonds to not get four per cent? Take the value of the main line and its branches to Miami, and at 8 per cent on the original cost it would be $1,200,000. Now as a matter of fact we have paid out only what—only $1,115,000 for those dividends. Another fact I wish to call to your attention is that while counsel is correct in stating that the original first cost of the road was only $12,000,000, we paid, as the reports show, and as the vouchers show, $3,600,000 additional on the work of construction, making $15,600,000 actually spent on that main line to Miami, and the divisions and branches, without counting the extension at all. We have not yet earned a fair and reasonable profit on that main line and extension. Unless there is quite a large increase in the business, with the necessities for increased expenditures and operating expenses, I doubt very much if we can earn even the three and one half per cent on the bonds.

Commissioner Prouty: Now Mr. Boggs wants to show that you can. I tell him that I do not think he could show it
1671 because your operations are so connected with one another that it is impossible to separate it. You can tell what traffic originates north of Homestead and you can tell perhaps something about what it costs to handle that traffic north of Homestead, but you cannot tell how much the extension may add to your business.

Mr. St. Clair-Abrams: I have told you we have estimated now—

it will take us some time to collect the general freight, but as to the amount we pay for the hauling of freight on the extension, we paid the main line $74,000 last year, for the fiscal year ending June 30, 1910, and we have figured out that the passengers alone that came from Jacksonville and went over the extension, that the main line got $113,000 of money from those passengers that it could not have earned but for the extension—the existence of the extension, by going to Havana, Key West and other points. Now as to the other freight, it would be very difficult, Mr. Chambers advises me, it would take him four or five weeks to separate that proportion. If we were earning six or seven per cent on those bonds I would concede the force of the argument of the gentleman, but our total earnings do not exceed a very reasonable profit on the actual cost of the main line to Jacksonville, without the extension. Now if you will take into consideration this fact that we are not earning any large figures, if you will take into further consideration that which I have put before you and which I wish you would give me an opportunity of proving, that we cannot possibly continue operating expenses at as low a figure as it has been for the past two years, if we must earn more money than we have ever earned before to enable us to pay even three and a half per cent on this $20,000,000, we have voluntarily cut down $109,000 of income since you made that order in regard to citrus fruits and pineapples. We have been forced, in order to prevent a strike, to increase our wage account $12,000 a month. There is $253,000 of increase already on record. Surely we must earn more money to replace that. Now if you add to that $100,000 and odd by complying with this supplemental petition, you force us to a loss, as I have figured it, and shown you there of $458,000. When we have reduced $109,000, it does seem to me the people generally should wait a while and give us a chance to catch up with additional business. We have voluntarily reduced, and the record shows in that very territory that they claim we were abnormally high, and that your Honor says we were abnormally high.

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We have already given them that reduction. Now they want it still more radically reduced because the commission passed an order in regard to pineapples. If your Honor pleases, if all fruit and everything was carried on a dead level of rates, the merchandise shippers may come in and make a similar demand.

You made a remark which I wish to call your attention to. Our rate on fertilizer is very low and as I understand earns very little money. That is for the encouragement of the very men who are protesting here.

Commissioner Prouty: Your rate on what, fertilizer?

Mr. St. Clair-Abrams: Yes, it is very low. I do not think it pays, but yet it does help the man who grows the vegetables and encourages him by putting in that very low rate, on this non-perishable stuff. We do not have to do as we do with the fruit and vegetable shipments. We have to give extra speed for our freight trains for vegetables.

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Commissioner Prouty: How many cars do you haul in a train from Miami up to Jacksonville?

Mr. Beckwith: From 25 to 45.

Commissioner Prouty: How many of those vegetable cars do you haul in a train?

1674 Mr. Beckwith: From 45—45 cars. We would increase the train from 45, but for the reason that the present sidings are very short and trains are delayed on account of passing.

Commissioner Prouty: How long does it take you to handle a train from Miami to Jacksonville?

Mr. Beckwith: We have been bringing them up in 22 hours..

Commissioner Prouty: You are getting $60 a car, 45 cars would be $3,500 a train.

Mr. Beckwith: Yes, if we had it for a longer season than two months it would be very nice.

Mr. St. Clair-Abrams: It is only for a few weeks.

Commissioner Prouty: I understand that.

Mr. St. Clair-Abrams: We have to carry these trains down empty at the same expense.

Mr. Boggs: May it please your Honor, counsel has inadvertently made a misstatement as to the time when that extension was built. The road was built and operating to Homestead before they ever got a charter to build the extension over the Keys.

Commissioner Prouty: Well, I still think it would be impossible for us in the case of the Florida East Coast Railroad to fix these rates on the revenue basis. I think we must inquire about

1675 what on the whole is the fair rate and establish it, having reference of course to the financial operations of the railroad, both past operations and present, and the prospective operations. You do not need to show to the commission, Mr. St. Clair-Abrams, that you cannot operate that road permanently for $400 a year per mile, as cost of maintenance. We know that. If you have done that for the last two or three years you of course have done it at the expense of your roadbed and way and structures, and if you have maintained your equipment for five or six hundred dollars a mile, you have probably done that at the expense of your equipment to a certain extent, and you are to make sufficient earnings so you can keep your road in good shape and at a high state of efficiency.

Mr. Beckwith: The reason we cut down those expenses was to enable us to pay the interest upon those bonds.

Commissioner Prouty: I know it, but on the other hand you must remember that practically one half of your indebtedness is for a piece of property that earns you little or nothing at the present time.

Mr. Beckwith: Well, it earns its proportion of it; it contributes a great deal, I think, to the main line.

1676 Mr. St. Clair-Abrams: Over $300,000 a year at present.

Mr. Boggs: If your Honor thinks that point is material, we would like to go into it.

Commissioner Prouty: Let me know what the Railroad Commission of Florida desires as to the trial of these other two cases, the Atlantic Coast Line case and the Seaboard Air Line case.

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Mr. Massey: I was engaged in consultation with the chairman of the railroad commission when your Honor made some remark and I did not hear it.

Commissioner Prouty: Were you not here when I stated that the Commission would, if the Florida commission desired it, rehear this whole question?

Mr. Massey: Yes, I have been here during the whole afternoon.

Commissioner Prouty: I simply desire to know whether it was the wish of your commission to proceed to a general rehearing of this question or not.

Mr. Massey: It was on that point that I was in consultation with the chairman of the commission when your Honor spoke. I understand the feeling of us all to be that we will submit this matter on the testimony already in these cases in regard to the car-
1677 load rates which have been discussed here. We do not at the present time desire to make a re-examination of the whole question such as was made here at the first hearing your Honor held in the City of Jacksonville. We would like, however, with two or three witnesses, to call your attention to the fact how much these rates which we are attacking of the Atlantic Coast Line and the Seaboard Air Line are out of alignment at the points of principal production such as were referred to in the Florida East Coast case, if you desire to hear us, we will introduce testimony on such point.

Commissioner Prouty: Yes, you may if you desire to do so.

S. J. CARLTON, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Massey: Where do you live?

Mr. Carlton: Arcadia.

Mr. Massey: What is your business?

Mr. Carlton: Buying and selling oranges mainly.

Mr. Massey: What railroad is Arcadia on, and in what
1678 County?

Mr. Carlton: De Soto County, the Atlantic Coast Line Railroad.

Mr. Massey: Do you make shipments over the Atlantic Coast Line.

Mr. Carlton: Yes, sir.

Mr. Massey: Make what statement you desire with regard to the comparative rate from Arcadia and other points of equal distance, if you are prepared to do so?

Mr. Carlton: I am familiar with the rate from Arcadia to Florida base points.

Mr. Massey: Before you go into that, is Arcadia or not, a considerable shipping point of citrus fruit?

Mr. Carlton: It is one of the largest shipping points in the state. We shipe more oranges and grape fruit than any other county.

Mr. Massey: How does De Soto County rank as a citrus producing county in the state?

Mr. Carlton: It ranks in the lead.

Mr. Massey: How far is Arcadia from Jacksonville?

Mr. Carlton: Arcadia to Florida base points, 202 miles from High Springs, which is its base point.

Mr. Massey: Your Honor understands the Atlantic Coast
1679 line has two lines, one going up the west side and the other up through the center of the state. Go ahead and state the rates.

Mr. Carlton: The rate bases on the distance from Arcadia, a distance of 202 miles.

Commissioner Prouty: What is the rate from Arcadia?

Mr. Carlton: 25 cents a box or $75 a car. That rate seems to be higher than any other product in Florida. From an unbiased standpoint I dare say there is not another enterprise that can stand the additional high rate that oranges, grape fruit and vegetables are standing and the people who are engaged in the business to live any length of time. The rate is as high now as it was say eight years ago, when the crop was only 25 per cent of what it is at the present time. It seems that the rate at that time was made at a time when there was not very much produced in DeSoto County. The crop has been constantly increasing, and a year ago this last season De Soto County, which Arcadia is about the center of the county, produced about 800,000 boxes of oranges and grape fruit, giving the railroad people, taking the county as a whole, about as much business as they could handle up to the capacity of the Atlantic Coast Line for a period of about five months, you
1680 might say; it stretched out about a period of five months, and for a short distance, 202 miles, they got for hauling this fruit $75 a car at 25 cents a box. By way of comparison we must contend that our exhorbitant rate from there to Florida basing point —they charge for hauling this fruit 25 cents or $75 a car for 202 miles. They take it for a distance of 1,200 miles or 900 miles, and haul it for 50 cents a box. In other words we are paying about four times the rate on the initial line from here to Florida base points as the connecting lines are charging to handle this stuff five or six times the distance. Our contention is this, that the Florida rate to base point is so high until either we have got to abandon the business or get a lower rate.

Now why do I say that? Simply because for the last three years there has not been any money in growing oranges and grape fruit.

Commissioner Prouty: There has been money in growing grape fruit, hasn't there?

Mr. Carlton: Well, balancing it up with the oranges, there has not been. There has been a profit in grape fruit, but a loss in oranges. And that country down there which is wonder-
1681 fully favored in the way of climate and soil and fertility and everything of that kind, has little attention given to it in the way of vegetable culture, because the rates are so high. If Florida ever becomes great it must be through her soil. We are not a manufacturing people and cannot produce in that line, and we have got to make good out of the soil, and in order to do that the railroad

people must do their part and we will do our part. It has got to be a mutual proposition. We do not want the railroad people to haul our product for less than they can afford to haul it, neither do we want them to have more than they are entitled to for hauling it. The question of what this brings in the market should not figure in the proposition. It ought to be a live and let live proposition, not as to what it would or would not sell for. If the railroad people cannot haul the stuff for the proposed rate, why the producers will have to abandon the business. There are now a great many groves that are lacking attention from the fact that the growers are not able to produce enough from those groves to buy fertilizer, irrigate and maintain those groves. So the result will be then there will be less production and the country will be impoverished and railroad people will get less to do, unless they are willing to meet the producer on half way grounds and make a rate we can afford.

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Commissioner Prouty: How much do you think the rate ought to be from Arcadia to basing point?

Mr. Carlton: We were contending for a rate of $45 a car.

Commissioner Prouty: That would be how much a box.

Mr. Carlton: Fifteen cents.

Commissioner Prouty: Ten cents less than you get now?

Mr. Carlton: Yes, sir.

Commissioner Prouty: You say you are a buyer of oranges at Arcadia?

Mr. Carlton: A grower and buyer.

Commissioner Prouty: About what do oranges net the producer now f. o. b. the cars?

Mr. Carlton: Boxed?

Commissioner Prouty: Boxed as they are placed in the car?

Mr. Carlton: For the last three years the average has been less than one dollar a box, or about one dollar a box loaded on cars. For the last two years I should have said.

Commissioner Prouty: Do you think a mileage scale rate would be a fair rate to apply to a movement of oranges on the Atlantic Coast Line and Seaboard Air Line?

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Mr. Carlton: I feel so, yes, sir; it should be based on mileage.

Mr. Massey: Have you made any comparison of the rate from Arcadia to base points with other points of equal distance from there, base points of about equal distance?

Mr. Carlton: Well, our rate is even higher than equal distance from the East Coast, based on mileage.

Mr. Massey: What is your rate on oranges from Arcadia to High Springs?

Mr. Carlton: 25 cents a box.

Mr. Massey: What is the distance?

Mr. Carlton: 202 miles.

Mr. Massey: Now state how that is out of alignment with freights on the East Coast.

Mr. Carlton: If I understood correctly——

Commissioner Prouty: The rate which they had established on the East Coast seems to be 22 cents for that distance and 26 cents.

Mr. Massey: Yes, the tariff speaks for itself.

Mr. Carlton: Yes. If I understood correctly the rate for 366 miles to Jacksonville from Miami, their compensation would be about $80 a car.

1684 Mr. Massey: Yes.

Mr. Carlton: Our rate from Arcadia to High Springs, a distance of 202 miles is almost double what that would be based on mileage.

Commissioner Prouty: I do not think a rate ought to be increased in proportion to mileage. That is to say, they ought not to have twice as much for hauling that car from Miami as they would receive for hauling it half that distance. It does not cost them twice as much or anything like twice as much.

Mr. Carlton: We contend that the Coast Line, their revenue does not cease when they get to the Florida base point; at any rate they get that 25 cents and then the additional haul they may have to Montgomery, or Washington or any other branch of their line, they get their division of the haul.

Commissioner Prouty: Well, we have in disposing of the case made the rate from the base point low because it is a main line haul, because the traffic does not move under the same circumstances, the traffic is more dense and the cost of operation less and all that. We have made the rate on the gathering line high in considera-

1685 tion of the fact that the traffic is very light. Now we had before us the other day a very complete statement of the cost of handling traffic on the main line and branch lines of the Atchison Railroad, and as I remember it, it cost four times as much to handle traffic on the branch lines as it did on the main line. It cost about 4 cents a ton mile on the main line and 16 and 17 cents a ton mile on the branch line. That shows you cannot compare the rate on the main line with the rate on the originating or branch line.

Mr. Carlton: Well, we contend that we are being discriminated against from the simple fact that fruit and vegetables are taking about three times higher rate than any other product we have in the state. Had you thought of that? You take naval stores, the lumber industry and all those propositions which are greater money makers than the culture or shipping of fruit, and they are getting a rate of about one-third of what we are paying to Florida basing point. Therefore we contend that it is positive discrimination, to a man who is unbiased in this proposition, and the wonder is how people produce fruit and vegetables and stand a rate three

1686 times higher than any other rate. It is a mystery to a great many people, and even the railroads themselves do not know how long they can continue those high rates and keep up the industry, because the industry cannot be maintained at these excessive rates.

Mr. Massey: How far are you from Bartow?

Mr. Carlton: About 48 miles I believe.

Mr. Massey: Do you know what the rate from Bartow is to High Springs?

Mr. Carlton: I am not positive on that, but the tariff will show.

Mr. Massey: The tariff shows 17 cents. And to Arcadia you pay 25 cents, and you are paying 8 cents more than the Bartow rate.

Mr. Carlton: Yes, or $24 a car. We pay $24 a car more than they do from Bartow.

Mr. Massey: Bartow is on the same line.

Mr. Carlton: Bartow is on the same line.

Mr. Massey: But nearer to High Springs?

Mr. Carlton: Yes, sir, about 48 miles nearer.

Mr. Massey: That is all.

Cross-examination:

Mr. Moore: Are you in the vegetable business as well as the orange business?

1687 Mr. Carlton: I ship some vegetables, but not extensively. Citrus fruit is my main business. I am more familiar with the rates on citrus fruits than on vegetables.

Mr. Moore: Does the citrus fruit mainly move in carloads?

Mr. Carlton: Yes, sir.

Mr. Moore: From your place?

Mr. Carlton: Mainly car loads.

Mr. Moore: Is that true of vegetables too?

Mr. Carlton: Only partially so. A great many vegetables go by express.

Mr. Moore: Take the railroad movement. Is it mainly carload or less than carload?

Mr. Carlton: You take water melons and potatoes and products like that, it is carloads. Beans and smaller vegetables it is less than car lots, by express mainly.

Mr. Moore: By express mainly?

Mr. Carlton: Yes.

Mr. Moore: So I understand that so far as the railroad business is concerned, it is a carload movement of vegetables?

Mr. Carlton: It would be when they are produced in quantities sufficient to load cars, yes, sir.

Mr. Moore: You talked about the rate up to the base point.

1688 I suppose what you have to figure on is the through transportation charges. This movement is mainly to the remote destinations, is it not?

Mr. Carlton: In procuring a rate we have to go to the tariff, and we figure to the Florida base point 25 cents or $75 a car, and then if it is beyond High Springs or Jacksonville the rate is added. They do not give us a through rate from Arcadia to any point; they only give a rate plus this 25 cents a box to Florida base point, so we cannot get out of Arcadia without paying this 25 cents a box to Florida base point.

Mr. Moore: What does it cost you to ship to New York, total charges?

Mr. Carlton: All rail?

Mr. Moore: Yes.

Mr. Carlton: It is 70 cents a box.
Mr. Moore: 70 cents?
Mr. Carlton: Or 71 cents; it is either 70 or 71.
Mr. Moore: These rates are now joint rates published in the tariff that I hold in my hand.
Mr. Carlton: Yes.
Mr. Moore: 71 cents carload and 75 cents less than carload.
1689 Mr. Carlton: Yes, about four cents higher in less than car lots, yes, that is correct.
Mr. Moore: Now I notice that those rates are very much lower than rates from a great many of the producing points on the Atlantic Coast Line. Have you observed that? I mean the through charges, I am not talking about this factor.
Mr. Carlton: Sometimes you know eastern rates are influenced by water transportation. That would not be a fair basis.
Mr. Moore: But what I meant to say is I meant—I may not have expressed myself correctly, is that they are lower than a great many of the rates from other producing points apparently in that same general section on the Atlantic Coast Line. Have you observed that? You were making a comparison, as I understood.
Mr. Carlton: Yes.
Mr. Moore: Do you know of any points from which the rates are higher than the joint rates make here?
Mr. Carlton: Yes, sir; from Fort Myers the rates are higher.
Mr. Moore: So you have the advantage in the Fort Myers section.
1690 Mr. Carlton: Yes.
Mr. Moore: Which is a very heavy producing section.
Mr. Carlton: Fairly heavy. It would not be considered a heavy point.
Mr. Moore: And increasing very rapidly, is it not?
Mr. Carlton: Yes.
Mr. Moore: In spite of the fact that the rates are a great deal higher from this locality you speak of?

(No reply).

Commissioner Prouty: Is the distance from Fort Myers section greater or less than from Arcadia?
Mr. Carlton: It is greater.
Mr. Moore: The total distance from Arcadia to New York is 1266 miles, is it not?
Mr. Carlton: Approximately so.
Mr. Moore: And from Fort Myers what is the total distance?
Mr. Carlton: It would be about 48 or 50 miles farther, about 1300 miles say.
Mr. Massey: How far is Fort Myers below Arcadia by rail?
Mr. Carlton: About 48 miles; I think approximately that
1691 is correct.

(Witness excused).

L. B. SKINNER, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Massey: Where do you live?
Mr. Skinner: Dunedin.
Mr. Massey: What county?
Mr. Skinner: Hillsboro.
Mr. Massey: On the west coast of Florida?
Mr. Skinner: Yes.
Mr. Massey: Gulf coast?
Mr. Skinner: Yes.
Mr. Massey: What is your business?
Mr. Skinner: Growing oranges and grape fruit.
Mr. Massey: In shipping oranges from Dunedin, what is your base point?
Mr. Skinner: High Springs.
Mr. Massey: How far is Dunedin from High Springs?
Mr. Skinner: 165 miles.
Mr. Massey: What is your rate on citrus fruit?
1692 Mr. Skinner: Twenty cents per box.
Mr. Massey: Any quantity?
Mr. Skinner: Any quantity, and car-loads the same rate.
Mr. Massey: Have you made any comparison of that rate with the rate on pineapples from Miami?
Mr. Skinner: Yes, sir.
Mr. Massey: Just state what the result of it is?
Mr. Skinner: Well, the rate on pineapples say from Miami which is a point mentioned here, was 25 cents for 366 miles, whereas our distance is only 165 miles with a charge of 20 cents.
Mr. Massey: You may cross examine.
Mr. Skinner: I think Bartow is mentioned here and I think Bartow is fully as far from High Springs as we are, and the charge there I understood you to say was 17 cents.
Mr. Massey: According to the tariff 17 cents.

Cross-examination:

Mr. Moore: What is the charge of the transportation traffic on a box of oranges from Bartow to Jacksonville?
Mr. Skinner: What did you say?
Mr. Moore: Take a shipment of oranges destined to New York.
1693 Mr. Moore: Figuring that you would say approximately $50 to $54, referring to what the witness who preceded you said, do you think from the comparisons that you have made that that charge would be out of line with the charges on other traffic travelling between the same points?
Mr. Skinner: Do I figure that 17 cents would be out of line did you say?
Mr. Moore: Carload earnings of $51 or $54?
Mr. Skinner: For a distance of 200 miles?

Mr. Moore: Yes, or from Bartow to Jacksonville.

Mr. Skinner: I do not know.

Mr. Moore: Well, it would seem to me that they could afford to haul a car of oranges from Bartow or Dunedin for $40.

I am going to put the figures in here which can be commented on by the witnesses here, and my own witnesses, when they are called. The figures given me are to this effect: From Bartow to Jacksonville on oranges the earnings would be $5L.

Commissioner Prouty: And what is the distance.

Mr. Skinner: Well, it is farther to Jacksonville. High Springs is the base point.

Mr. Moore: You take the tranportation of commodities
1694 between the same points in the reverse direction, grain per car of twenty tons would yield $84; machinery per car of twenty tons would yield $68; farm wagons per car of 20,000 pounds would yield $82; agricultural implements per car of 20,000 pounds, $82; structural iron or steel per car of 40,000 pounds would yield $109.33.

Commissioner Prouty: Have you ascertained yet what the distance is?

Mr. Moore: 210 miles.

Mr. Skinner: Are those the local rates you read or the through rates?

Mr. Moore: No, those are the local charges.

Mr. Skinner: The local charges on oranges are higher, too?

Mr. Moore: I understand they are, but not largely higher.

Mr. Skinner: Well, one reason I think that they could afford to haul them for $40 is because they did it. For a great many years prior to this agitation of the rate hearing and prior to the railroad commission coming in, they used to pay from ten to twenty cents a box to the grower to turn the fruit over to the railroad and they were mighty glad to get it and very often that went to buyers
1695 like Mr. Carlton, but now the growers think they are entitled to part of that money. It was a regular system among the railroads of Florida through their traveling men to go and pay the orange grower or buyer from ten to twenty cents a box.

Mr. Moore: How long ago was that?

Mr. Skinner: That was about in 1894.

Mr. Moore: 1894?

Mr. Skinner: It was prior to the freeze, yes, sir.

Mr. Moore: 1894?

Mr. Skinner: Yes.

Mr. Moore: But these rates which we have which are proposed to be reduced, at least considering the charges up to the base point, were settled by the Florida Commission subsequent to that, in 1902.

Mr. Skinner: Well, possibly they did not know about this rebate business. This rebate business, they were awfully anxious to get the business, especially what used to be the Seaboard, the F. C. & P and the testimony can be brought in by grower after grower who received from ten to fifteen cents a box rebate, and they were running after the business all the time too.

Mr. Moore: There was testimony of that sort in the old
1696 case so I do not care about going into that in any detail, but since 1902——

Mr. Skinner: Well, that enters into the cost of carrying the stuff to Jacksonville without any question.

Mr. Moore: But since 1902, on these rates fixed by the Railroad Commission which represented a reduction, there had not been anything of that sort.

Mr. Skinner: I do not know that the Railroad Commission knows everything, I do not know whether their rate was really reasonable or not. What we are trying to get now is a good reasonable rate on which the railroad can afford to carry the stuff.

Mr. Moore: What point did you say Bartow based on, High Springs?

Mr. Skinner: I suppose it is. I don't know, it ought to be based on High Springs.

Mr. Moore: I understood Mr. Massey to be basing it on Jacksonville. I may be wrong about that.

Mr. Skinner: No.

(Witness excused).

Mr. Massey: I think it has been already referred to in the
1697 beginning of this case, but taking effect February 15th, the tariff was filed by the Atlantic Coast Line, the Georgia Southern & Florida, the Seaboard Air Line Ry. and the Southern Railway, I. C. C. No. 2, issued by C. McD. Davis, Agent. That is the tariff which was referred to as in the computation of receipts wiping out the base point, and going from points of origin to points of destination through. I want to get it on the record by number. I will call Mr. Chase.

JOSHUA C. CHASE, was recalled as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Massey: Where do you live?

Mr. Chase: Jacksonville.

Mr. Massey: What is your business?

Mr. Chase: Orange grower and growers' marketing agent of Florida fruits and vegetables.

Mr. Massey: Do you do an extensive shipping business out of Florida?

Mr. Chase: Yes, sir, altogether out of Florida.

Mr. Massey: Have you examined this tariff which I have
1698 just referred to?

Mr. Chase: I have.

Mr. Massey: I suppose this matter would appear by comparison of the tariff, but I want to get it particularly stated here. What differences are made in that tariff and the tariffs which have heretofore been made effective?

Mr. Chase: Heretofore the rates have been made to base point and

there added to the carload rate to destination or to market. Under the present construction it constitutes an advance in the rate, inasmuch as it applies from the producing point to destination, and they have added the any quantity rate all the way from producing point to destination and made a minimum of 300 packages, whether the car contains 300 packages or not. Very often a car has to move with less than 300 packages or boxes, and under the old rate it could move up to the base point with a charge for the exact quantity, and under the present construction if there is any shortage in the rate that is to be charged for from producing point to destination.

Commissioner Prouty: That is to say they have constructed a carload rate from the producing point to destination by adding the any quantity rate to the rate established from the base
1699 point.

Mr. Chase: Yes, sir, and legally they would have to charge the minimum from the producing point to the market, so it constitutes an advance on all rates under that tariff.

Mr. Massey: You may cross-examine.

Mr. Moore: That is all.

(Witness excused.)

Mr. Massey: I will rest the Florida Commission's case at this point, may it please the Commissioner.

Commissioner Prouty: Mr. Moore, you may proceed.

Mr. Moore: I will call Mr. Capps.

C. R. CAPPS, was recalled as a witness, and having been previously sworn, testified as follows:

Direct examination:

Mr. Moore: With a view of what the last witness Mr. Chase said, will you state how your Interstate rates are constructed now from producing points to the points of destination?

Mr. Capps: Do you mean how published?

Mr. Moore: Yes.

Mr. Capps: Our rates are published as the rate through from the producing point to the final destination. That has been
1700 our practice from probably as far back as 1902 or 1903. This new tariff does not change the conditions as to the publication of the Seaboard rates in any particular.

Mr. Moore: How are the differences made between the carload and less than carload rates, what are they in general?

Mr. Capps: In the case of western oranges the difference is now I think 29 cents a package, 41 cents as against 70 cents less than carloads. In the eastern rates the difference is ordinarily ten cents a package. The exceptions to the ten cent differential are Boston, New York, Brooklyn, Philadelphia, Baltimore and Washington. The ten cent differential was in the nature of an agreement between the complainants in the old case and the defendants, in Commissioner Prouty's office on November 21, 1908.

Mr. Moore: Why were those exceptions made, because of the water competitive conditions existing at the points you have named?

Mr. Capps: At those particular destinations, yes.

Mr. Moore: Those differences represent the differences that were ordered by the Commission as I understand in the former decision of the case.

Mr. Capps: They were suggested by the Commission in
1701 its first decision. The carriers did not in the beginning act on that suggestion.

Mr. Moore: In other words the differences were extended to the producing points?

Mr. Capps: Yes, sir.

Mr. Moore: Now you have examined this schedule that proposes changes, I suppose. Will you state on what principle that schedule or list of rates seems to be made up, if you can discover any principle that would apply in making it up?

Mr. Capps: It does not seem to be made on any particular theory. It is not made on a mileage basis. The figures do not indicate that it is made with the thought that there should be any fixed relation between citrus fruits and vegetables. We find in some cases that the vegetable rate works out less per hundred pounds than the citrus fruit rate, and in other cases that the citrus fruit rate works out less per hundred pounds than the vegetable rate. We find in the case of our line that there is fixed for us from Lake Charm, a station on the branch running east from Wildwood a distance of 198 miles to Jacksonville, rates of 8 and 10 cents on vegetables and 12 and 15 cents on
1702 citrus fruits. Lake Charm is on a branch 60 odd miles east of Wildwood. From the main line station south of Wildwood, take Lacoochee, which is about 30 miles below Wildwood, they propose to allow us 13 and 16 cents on citrus fruits as against 12 and 15 cents. In the case of vegetables, they propose the same figures as from Lake Charm, that is 8 and 10 cents. Now, from our standpoint the cost of handling oranges or any other traffic from Lacoochee entirely over the main line up to Jacksonville a shorter distance, is materially less than from Lake Charm, probably the most expensive operation we have in the state of Florida is over the line between Orlando and Lake Charm. That pretty well indicates to my mind that the rates were not suggested with any respect to operating conditions or costs.

Mr. Moore: Do they seem to be made with reference to any consistency among the rates themselves?

Mr. Capps: Absolutely none.

Mr. Moore: The cases vary arbitrarily, do they not?

Mr. Capps: They differ. And take the reductions in the case of Palmetto, Florida, which is probably our largest orange and vegetable producing point in the Manatee section, the proposed rates on oranges work out 18¾ cents per hundred pounds, and on vegetables they work out at 18 cents per hundred pounds.
1703 The present revenue per car of 300 boxes of oranges is $72. The Florida Commission's figure proposed to cut that down to $45.

Commissioner Prouty: What is the distance?

Mr. Capps: It is approximately 240 miles, actually 238 miles. On vegetables the present car revenue on the basis of 20,000 pounds is $70 and it is proposed to reduce that to $31.50.

Mr. Moore: What station are you talking about?

Mr. Capps: Palmetto, the same station. In other words under the rate suggested by the state commission, where our rate from Palmetto is $72 on oranges and $70 on vegetables, it is proposed to reduce the returns per car to $45 and $31.50, a reduction in the case of vegetables of more than 50 per cent.

Mr. Moore: Is that an isolated case, or does that appear in other cases?

Mr. Capps: That appears practically over our entire line south of Turkey Creek, which is our heavy producing section; certainly 60 per cent of our vegetable freight originates on that line.

Mr. Moore: Using these figures they propose would simply have the effect of reducing the carload rates, would they not, and widening the difference between the carload and less than carload
1704 rates, even assuming there was no reduction made in the less than carload rate on the through transportation charges.

Mr. Capps: Yes, it would increase the ten cent differential to the extent of whatever differential might be made below Jacksonville. If below Jacksonville it is made 5 cents, it would be increased from ten to fifteen cents.

Mr. Moore: Is there anything you know of in trasportation conditions which would seem to justify that departure from the present rate?

Mr. Capps: No. From our standpoint we are probably handling this traffic at an increased expense. We have had considerable increase in wages. I am told by our operating people that the wages of our train employees have increased about 40 per cent, that is it will including the additional increase to be made this coming April.

Commissioner Prouty: Since when?

Mr. Capps: Since the first of last June.

Commissioner Prouty: Forty per cent?

Mr. Capps: Forty per cent. In addition to the increase in wages there has been a change in the method of handling.
1705 Where the original decision in the old Atlantic Coast Line case showed there is an infrequent movement of oranges in refrigerator cars used as ventilators, the conditions today have changed to the extent we are today required or called on to——

Mr. Moore: I believe in the decision of 1908 and the report of the commission, reference was made to the fact that the refrigerator cars were infrequently used.

Mr. Capps: Yes.

Mr. Moore: But you say there has been a change in that regard?

Mr. Capps: I have here a notice from the Florida Citrus Exchange under date of September 15, 1910, on the subject of suitable equipment for the transportation of perishable product the coming season, and in this letter this notice is given: "This is to notify you

that we shall require ventialted refrigerator equipment for all of our shipments after about the 15th of November, and possibly may require some of this class of equipment prior to that date."

Mr. Moore: In what way will that increase be expense to the carriers if at all?

Mr. Capps: It very materially increases our haul of empty equipment; we cannot load these refrigerator cars with fertilizer, naval stores and a great many other classes of traffic. We are
1706 obliged to handle them quickly because of the demand, and we have not time to stop those cars off at Jacksonville or other loading points for merchandise, loading that is for freight that they probably could carry without damage. In looking over our statistics we find that last fall our empty car mileage of refrigerator cars in the state of Florida was 114 per cent of the loaded car mileage, due to the fact that after carrying these empty refrigerators down in south Florida, say to Tampa, that we have to haul these cars back up to Turkey Creek into the Manatee section or vice versa. There has also been a very decided increase in the claims. This same letter from the Florida Citrus Exchange——

Mr. Moore: You mean loss and damage claims?

Mr. Capps: Yes, sir. Frozen shipments. This same letter says "Although we notified you early of our desire for this equipment, we were unable at all times to secure the same, the result was exactly what I anticipated, a large number of frozen shipments and a consequent filing of claims for freezing, we being obliged to file 256 claims for freezing, aggregating $43,263.39. My information is that the annual report of the Florida Citrus Exchange showed that they filed last year claims which amount to 3 per cent approximately of the entire gross revenue on all their traffic.

1707 Mr. Moore: Did you give the same careful and expeditious service that you gave when the case was tried before?

Mr. Capps: Yes, sir, operate precisely the same schedules and about as satisfactory. We have increased our loading point through the construction of additional private sidings——

Mr. Moore: Have you any idea at all or can you get any idea in any way of what the additional cost will be incident to the use of the refrigerator cars instead of the equipment that has been used heretofore, if you carry out and comply with the request contained in that letter?

Mr. Capps: I have not those figures with me, but my recollection is that our operating department gave me some figures prior to the November hearing of the Railroad Commission, and at that time they gave the additional cost of refrigerator cars at $6.30 per car.

Mr. Moore: I believe I understood you or some one connected with your company to say that you found it so far this year necessary to order something like 500 additional refrigerator cars as compared with those ordered last year?

Mr. Capps: For the orange movement.

Mr. Moore: Because the orange movement was requiring that additional equipment?

1708 Mr. Capps: Yes, sir, that is true, in the face of the fact that the orange movement has been less this year than the previous year.

Mr. Moore: Have you had an opportunity to think over the reduction of your revenues that would occur if this complaint or something similar to this complaint were granted? Did you get up any figures as to that, based upon any movement of any year?

Mr. Capps: Well, I can approximate it. In the case of the vegetables the reduction averages about $18. to the car, and we ought to handle this year from our own lines about 4500 cars. That would give us a loss of about $81,000 on vegetables. Now oranges I don't know just what our movement is going to be this year, but the average reduction is about 5 cents a box, and based on a 6,000,000 box crop, that means $300,000. Of course that is for all the roads in the state.

Mr. Moore: Well, Mr. Capps, if the prayer of these complainants is granted, or something approximating it, it will simply widen the difference between carload and less than carload movement, and encourage carload movement, that is the idea?

Mr. Capps: Well of course it would widen the difference. I would not undertake to say that it would encourage and increase carload movement, certainly of oranges. The original testimony in this case and the decision indicates that at that time 94 per cent of the orange crop was moving in carloads. Now in order to force the other six per cent into carloads these reductions would more than consume the entire revenue on the six per cent.

1709 Mr. Moore: As to vegetables, if it should result in forcing an additional carload movement, you would still have to maintain your service for the less-than-carload movement. Take the New York business, where we run regardless of quantity cars, we have to give the same service there on one thousand pounds that we do on ten thousand pounds, just in the same way we give the same train service during the light months of the season that we do during the heavy months of the season, as I testified in the previous case; we maintain our train throughout the year, and run it every day when there was not as much as a carload of vegetables. We have not found that the carload rates on vegetables and citrus fruits which have been in effect for some months, a year or more, have had any material effect on our transfers. We have got the same transfer at West Jacksonville or Hamlet that we had before 1908, and we have practically the same force at Hamlet, and we have had to make some increases in our forces at West Jacksonville, which indicates to my mind that the demand for that transfer which is on perishables, has not been diminished.

Mr. Moore: You say in your opinion the service would have to remain at its maximum even though there were a larger carload movement.

1710 Mr. Capps: Yes, sir.

Mr. Moore: So it would be a net loss of revenue, as you view it?

Mr. Capps: Absolutely.

Mr. Moore: Has anything happened since the last decision, which would seem to justify that?

Mr. Capps: Not that I know of. I have been pretty well into this situation, and am thoroughly familiar with the conditions in Florida, and the conditions of the growers. There has not been any particular demand from our growers for any reduction of rates. They are pretty generally satisfied. What they want is service, and the correspondence we have with the growers has reference to service rather than to any question of rates.

Mr. Moore: Is there any indication of their being satisfied found in the fact that there has not been any increasing use of the rail and water rates?

Mr. Capps: I do not understand the question.

Mr. Moore: I say, is there any indication of the fact that they are satisfied with the service found in the further fact that they have not increased their use of the rail and water rates on citrus fruits.

1711 Mr. Capps: Yes, sir, we have testimony from one of the largest growers of oranges in the State (referring to papers) in which he indicates that he would use all rail service without respect to the measure of the rail and water rate.

Mr. Moore: On page 42.

Mr. Capps: Yes, sir; in the hearing before the Railroad Commission in November last. Mr. Preston, of the Manatee Lemon Company, one of the largest producers in the State, made the statement that he preferred a good rail route even with the difference of eleven cents a box in favor of the rail and water route.

Mr. Moore: The rail and water movement has diminished since the change in rates rather than decrease, has it not?

Mr. Capps: That is my information.

Mr. Moore: There is a statement in the report of the Commission in 1908, as to the percentage of that movement, and our information is it has diminished. That is correct, is it?

Mr. Capps: That is my information.

Mr. Moore: A while ago you said something before you took the witness stand, about the relation of the small grower and shipper to this proposition, to widen the difference between carload and less-than-carload rates. What was that?

1712 Mr. Capps: I undertook to explain that because of these colonization schemes in the state, and the sale of small farms, 5, 10 and 15 acre tracts, that the proportion of small growers is going to increase very largely in the next few years, and in my opinion the proportion of less-than-carload vegetable movements must increase. Now, a great many of these settlers are locating in the northern parts of the state, where there will be no celery or practically no lettuce, and no tomatoes. They have got to confine themselves to beans and peas, and a class of vegetables that do not ordinarily move in straight carloads. I cannot myself see that it is to the interest of the state to freeze out the small grower.

Mr. Moore: Do you remember when you were before the Railroad

Commission in November, 1910, that a letter was read from Dr. Inman?

Mr. Capps: Yes, sir.

Mr. Moore: Who was he?

Mr. Capps: At that time President of the Florida Citrus Exchange.

Mr. Moore: And he deprecated this very thing we are on now, did he not?

1713 Mr. Massey: Ask him what he said in the letter.

Mr. Moore: Well, I will ask him what he said in the letter.

Mr. Capps: The letter is very short, and I might read it.

Mr. Moore: Read it, by all means.

Mr. Capps: Letter dated November 4th, 1908, addressed to The Florida Railroad Commission, or to Chairman Burr: "I have your communication of October 21st, and am sorry to inform you that my health is such that it would be impossible for me to meet you in Jacksonville. However, you will remember the statement I made before the Interstate Commerce Commission some few years ago, relative to what I thought a just and equitable rate on citrus fruits from Florida. You will recollect at that time I suggested a blanket rate from all producing points south of Sanford. This would affect relatively all the growers where the schedule you have imposed would benefit a few growers, and upon the whole, in my opinion, would leave matters in worse condition than they are to-day. What we should have would be a uniform rate on all citrus fruits from points south of Sanford to Jacksonville, of about 15 cents a box. I believe the time will soon come when this will be acceptable to the transportation companies. I regret I cannot be with you, as I feel a deep interest in your labors, but as you are aware, my age prevents

1714 my taking an active interest in your movements."

Commissioner Prouty: Would that be satisfactory to you, Mr. Capps?

Mr. Capps: 15 cents all around, no, sir. It would be satisfactory if the oranges were produced to-day the way they were in 1895.

Mr. Moore: Just one or two other questions. I am not going into any details as to what occurred before the Commission in November, 1910. You were there to protest against the action suggested then?

Mr. Capps: Yes, sir.

Mr. Moore: I think if you will just let me file his protest in this record, it will save my asking him some questions, and shorten the examination.

Commissioner Prouty: Yes.

Mr. Massey: Is that the record of the proceedings before the Commission?

Mr. Moore: Yes.

Commissioner Prouty: I think I asked you to what extent the carload vegetable rate was availed of now, this morning.

Mr. Capps: This afternoon, and I was not able to answer.

1715 Mr. Moore: I have requested Mr. Menzies to get us that information, and will furnish it after the hearing.

Commissioner Prouty: Do you know what your average loaded car earnings in the State of Florida are?

Mr. Capps: On all traffic?

Commissioner Prouty: On all traffic.

Mr. Capps: No.

Commissioner Prouty: Do you know what they are on any particular species of traffic?

Mr. Capps: No, we keep our earnings on different classes of traffic by ton miles, not by the car. We do not keep any account of the average car loading. We have our average haul, average revenue per ton, and per ton mile.

Commissioner Prouty: Do you know your average train mile earnings? I think both those facts must be stated in your report to the Interestate Commerce Commission as to your system as a whole, but that might not indicate it as to Florida.

Mr. Capps: We have the train mile earnings as to the entire system on all business for the last fiscal year, in the annual report, but we do not keep it separately as to the State of Florida; at least, I think not.

1716 Commissioner Prouty: Would you regard earnings of $45 a car for a haul of 175 to 200 miles as too little?

Mr. Capps: Yes, sir, on perishable traffic I would.

Commissioner Prouty: Well, now, just what do you mean by perishable traffic? Would you include oranges under that head?

Mr. Capps: Yes, sir. We have this to bear in mind too: take our Manatee extension, the line south of Turkey Creek, there is absolutely nothing on that line but oranges and vegetables; there is no timber, there is one small sawmill, but no manufactures of any kind except a couple of small ice plants. When there is a failure in the orange or vegetable crop, we have no business down there. We have to maintain the trains and service——

Commissioner Prouty: If that is so, you ought to make such rates as will build up that industry. These people say here that under the present rates this industry can't develop.

Mr. Capps: But it has developed there.

Commissioner Prouty: Is it continuing to develop?

Mr. Capps: Yes, sir, probably more so than any section of the state.

Commissioner Prouty: Mr. Massey, have you some inquiries of Mr. Capps, or were you through, Mr. Moore?

1717 Mr. Moore: Yes, sir, unless there is something further Mr. Capps wants to state.

Mr. Capps: I want to make one correction about the comparison of the scale of rates, which the Commission ordered for the East Coast road on pineapples with our citrus fruit rates. I find these rates are as a rule less than our any-quantity rate, and I would like, if you wish it, to file a statement of our present rates from important producing points as compared with the rates as they would be under the scale which the State Commission fixed for the Florida East Coast road.

Commissioner Prouty: I would be glad to have you take that proposed schedule for your line, and indicate in each case the distance to the point, whether the point is on the main line or branch line,

and the present rate, and the proposed rate, and the rate which would be established if we applied the pineapple schedule.

Mr. Capps: Yes, sir, I take it you would only want that as to the important points? You do not care to have me compute every little point?

Commissioner Prouty: Not every station but still we are apparently required to pass upon the whole line. What do you
1718 say as to the propriety of fixing some mileage scale for the transportation of citrus fruits up to the base points?

Mr. Capps: I do not think, Mr. Commissioner, it will work always in the case of the Atlantic Coast Line and Seaboard. You take in the Lake district, take our line between Wildwood and Lake Charm: we have got to adjust our rates on the east end of that line with some respect to the Atlantic Coast Line rate. At the East end the Atlantic Coast line is the short line, and at the West end we are the short line.

Commissioner Prouty: Of course the short line must necessarily govern in the case of the mileage scale.

Mr. Moore: The red line is the Atlantic Coast line, and the other is the Seaboard, to show how the lines work in and out, on that map.

Commissioner Prouty: That is true everywhere Now in determining the rate to the base point, do you always take the nearest base point? I do not know that you have but one base point.

Mr. Capps: We have but one, Jacksonville.

Commissioner Prouty: The Atlantic Coast Line has three, has it not, High Springs, Gainesville and Jacksonville.

1719 Mr. Capps: I think so.

Commissioner Prouty: Is that all, Mr. Moore?

Mr. Moore: That is all I care to ask him. That map is fixed as it is by Mr. Menzies, and it is with a view of showing how the lines run, and giving a general idea of the rate figures.

Mr. Boggs: Have you a copy of that last exhibit, the protest referred to?

Mr. Moore: Mr. Ketner is fixing a copy for the stenographer.

Mr. Burr: I stated we had no report made of the protest, and when you gentlemen requested that we join with you in the employment of a stenographer, I stated we did not care to report the case, and then you asked if we had any objection to your reporting it, and we said we had none, but would not stand responsible for what that report might contain. I have never seen it, and do not know what it does contain.

Mr. Capps: What I am filing is a copy of a letter addressed to you, the original of which is in your possession, and which you can very readily verify by the original.

Mr. Moore: We are not asking to put in the full report.

1720 (The paper so offered and identified was received in evidence, and thereupon marked Defendants' Exhibit No. 3, Witness Capps, March 2nd, 1911, and is as follows:)

"IN ATLANTA, *November 9th*, 1910.

Hon. R. Hudson Burr, Chairman the Railroad Commission of the State of Florida, Jacksonville, Florida.

DEAR SIR: In acknowledging your notice of October 13th, 1910, in which it is stated the rates from interior points to Florida base points on fruits and vegetables have been investigated by the Commission and found to be excessive, unjust, unreasonable and discriminatory, and suggesting a conference in Jacksonville, Florida, November 10th, 1910, for the discussion of said rates, I wish to bring your attention to the fact that the Interstate Commerce Commission, which alone is empowered to regulate said rates has, after an exhaustive investigation, decided said rates to be just, reasonable and not unlawfully discriminatory.

Your attention is respectfully invited to decision of the Interstate Commerce Commission in Florida Fruit and Vegetable Shippers' Protective Association versus A. C. L. R. T. Co et als. 14 I.
1721 C. C. Reports 476, in which said decision there appears the following language: "From an examination of the elaborate figures which were introduced upon the trial showing the character of the traffic handled by these Florida roads, the conditions under which it is handled, their earnings, and the cost of operation running through a series of years, it is difficult to see how these railroads can be expected to transport in a suitable way this fruit and vegetable traffic from points of production to these basing points for a less sum than they now receive. It is difficult to see how, even upon the present tariff, those lines can expect to pay any reasonable return upon their investment. We feel that these local rates, although they are high in comparison with other local rates, are as low as should be established under all of the circumstances."

"Again on page 496 of the same decision, the Interstate Commerce Commission says: 'Our conclusion upon this branch of the case is that the present rates up to the base points while high in comparison with similar rates in other localities are as low as they ought to be under the conditions obtaining upon these Florida lines.'

1722 "Neither these rates nor any part thereof are subject to the jurisdiction of the State of Florida, or to the jurisdiction of the Railroad Commission of the State of Florida. This fact was clearly pointed out by Interstate Commerce Commissioner Prouty in testimony taken in Jacksonville, Fla. December 20th-21st, 1909, in Florida Fruit & Vegetable Shippers Protection Association versus A. & V. R. R. Co. et als. Said testimony shows that you in answer to a question from Attorney Glasgow said as follows: 'I so considered it, but at the time the Railroad Commission fixed these rates the Interstate Commerce Commission had no rate-making power and we assumed at that time that we could fix these rates, but since Congress has empowered the Interstate Commerce Commission as a rate-making body, we no longer believe we have jurisdiction.' It is exceedingly strange that the Railroad Commission of the State of Florida, upon the testimony or complaint of certain shippers, and with no investigation whatever into the Railroads' rights in the mat-

ter, should be able to reach a conclusion that these precautional rates are unjust, unreasonable and discriminatory when the body upon which the United States Government has imposed the duty of investigating these rates states in a published opinion that it
1723 has thoroughly investigated the rates and after hearing both sides has reached the conclusion that they are just and reasonable.

Yours truly,
(Signed) CHARLES R. CAPPS,
Vice-President."

Copy: leb.

Mr. Massey: As I understand, a good part of this examination of Mr. Capps by Mr. Moore has extended to a part of this case which I said I did not propose to go into further, that is to say, we should rest our case on the carload and less than carload rates on the testimony already in. I do not propose to cross-examine Mr. Capps on anything relating to that matter, but I have one or two other questions I would like to ask. Have you that letter of the Citrus Exchange with relation to refrigerators cars, from which you read a portion?

Mr. Capps: Yes, sir.

Mr. Massey: Let me see it, please.

(Paper handed counsel by witness.)

Mr. Massey: This letter demanding suitable ventilated and refrigerated equipment, appears to be dated September 16th, 1910. Has your company taken any steps to comply with the request of the Florida Citrus Exchange in that particular?

1724 Mr. Capps: We said to Mr. Cook in acknowledgment of that letter, that we would make our best efforts to provide refrigerator cars for all of his oranges, and we have done the best we could in that direction.

Mr. Massey: Well, what is the best you could do, and what have you done in addition to what was done before in that particular?

Mr. Capps: I made the statement that we had ordered for the orange movement this year 500 more cars than we had ordered the previous season, when there was an increased movement. In addition to that we find now we have provided refrigerator cars this year for a great many shipments that could not possibly have been affected by the cold weather; that is due to the very open weather we have had.

Mr. Massey: The Florida Citrus Exchange in asking for that kind of equipment was asking for the proper kind of equipment for shipment to the destination which is named, was it not?

Mr. Capps: No.

Mr. Massey: It was not?

Mr. Capps: They cover all destinations, and there is no necessity for refrigerator cars for the carriage of oranges going to Atlanta, Richmond and Norfolk. We have not had any weather in
1725 Norfolk this winter that was cold enough to freeze an orange in the open.

Mr. Massey: So then they were asking for something over and above what was necessary for them to have in that particular, were they?

Mr. Capps: Yes, sir, and for this reason, that when the car is loaded, the shipper does not ordinarily know what the final destination may be; the car may be loaded and turned over to the railroad with Atlanta as destination, and the destination may subsequently be changed to Chicago, Milwaukee or Portland.

Mr. Massey: The use of those refrigerator cars is not confined to fruit and vegetables, is it? They can bring back a return load of something else, can they not?

Mr. Capps: They can bring return loads of some things, provided we should so disregard the demands of the fruit shippers as to delay those cars at Jacksonville and Savannah until we could accumulate a load for them. Of course there are some commodities we cannot handle in them anyway.

Mr. Massey You cannot handle fertilizer?

Mr. Capps: We cannot handle fertilizer and naval stores and molasses and oil, fresh fish and bulk cabbage——

Mr. Massey: But because fruit and vegetables are shipped
1726 north in those refrigerator cars, does not necessarily mean that they come back empty, does it?

Mr. Capps: We have done the best we could to get loads in those cars, and our figures show for this year that the empty mileage in Florida was 114 per cent of the loaded mileage. I think in the old case we showed that the empty mileage of refrigerator cars over our line south of Richmond for Florida traffic was about 88 per cent, I think, of the loaded car mileage. I have the exact figures here (showing paper), 87 per cent on the eastbound cars, and 108.4 per cent on the westbound cars.

Mr. Massey: Do not a great many of those cars come south loaded with fresh meat?

Mr. Capps: No, we do not handle fresh meat in these Fruit Growers' express cars. They are used entirely for vegetables and fruits.

Mr. Massey: Now, what did you say the increased expense for complying with this unnecessary demand of the shippers would be?

Mr. Capps: My recollection is that the figures given me by our operating people was $6.30 a car.

Mr. Massey: Then you do not know anything about it yourself, and are not subject to cross-examination on that point, are
1727 you?

Mr. Capps: Well, I cannot tell what the extra cost of hauling a car is; that is not my particular line of business.

Mr. Massey: That is not in your department?

Mr. Capps: But it has been customary before the Commission for one witness for a railroad to testify as to any of its business, relying upon information from other departments.

Mr. Massey: You spoke something about loss and damage claims. Were not a good proportion of those for frozen fruit or vegetables?

Mr. Capps: The letter I quoted from stated that that entire

amount, I think some 43 or 46 thousand dollars, was for frozen oranges.

Mr. Massey: Is that what your company paid out?

Mr. Capps: No, sir.

Mr. Massey: That was the amount of the claims then, was it?

Mr. Capps: That was the amount of the claims by one concern. I think a great many of those claims are unadjusted as yet.

Mr. Massey: Have you any statement as to what they have paid?

Mr. Capps: No.

1728 Mr. Massey: Are not some of those claims recoverable by you as the initial carrier against some of your connecting roads?

Mr. Capps: I think we have probably paid all the claims for which we are responsible.

Mr. Massey: For which you are responsible?

Mr. Capps: For which we are responsible, practically all.

Mr. Massey: Is any proportion of these claims you have mentioned then—all of them must be relating to your connecting lines which have been made upon you.

Mr. Capps: No, I understand that figure to represent the claims filed by the Exchange against all roads.——

Commissioner Prouty: I hardly think it is worth while to go into this general question of the orange rate now. We went over all that ground in the other case.

Mr. Moore: The only reason I asked the question was simply because I had been informed by these gentlemen, that claims are rather increasing than diminishing, and I did not want to violate your ruling in any way.

Mr. Massey: I was going to call to the attention of the Commissioner that it was cross-examination on matter brought out by the other side.

Commissioner Prouty: Yes, I understand. That is all, Mr. Capps.

Witness excused.

1729 JAMES MENZIES *was* called as a witness, having been duly sworn, testified as follows:

Direct examination:

Mr. Moore: Mr. Menzies, since the former decisions of the Commission, your company has published a tariff showing joint rates from producing sections, has it?

Mr. Menzies: Yes, sir, we have published through rates on oranges and other citrus fruits, and we expect to do the same thing as to vegetables. The vegetable tariff has not yet been published. By the publication of the through rates we have done away altogether with the former basis showing arbitraries up to the Florida basing points, so that the arbitrary or specific is now part of the through rate.

Mr. Moore: Does that have the effect of increasing the transportation charges in any way, or embarrassing the shipper? You heard the testimony of the witness a while ago on that point?

Mr. Menzies: I do not understand that it has caused any increase in the through rates. I believe one of the witnesses was making a statement to the effect that you have just mentioned when I came in, or shortly after I came in, but I did not quite understand just upon what theory——

Commissioner Prouty: The point was this, Mr. Menzies.
1730 You have constructed your carload rate by adding to your carload rate from the base point, the any quantity rate up to the base point. At the present time the oranges might move up to the base point in a quantity less than the minimum, whereas now, under your tariff, the car must be loaded to 300 boxes over the entire distance.

Mr. Menzies: I do not understand that that would make any difference. The any quantity rate to the base point is so much——

Commissioner Prouty: For example, a shipper might load a car with 200 boxes at Arcadia, and ship it part way up, put in another 100 boxes, and send the whole along now at the any quantity rate up to the base point plus the carload rate beyond the base point. To-day he must load the whole 300 boxes at Arcadia. The rate would be the same.

Mr. Menzies: But I contend this, your Honor, that the through charge which we would make under a combination would not be any higher than the rates that we previously charged.

Commissioner Prouty: Well, that perhaps is not worth talking about, because I understand it is perfectly convenient to load the car to its capacity at the point of origin.

Mr. Menzies: That is my understanding, as a rule.

Mr. Moore: Just illustrate the radical changes that are proposed.

Suppose we think of these proportional rates up to the base
1731 point, and compare those rates carload as suggested by the Florida Commission with the rates which have been from time to time in effect from the producing point to the base point. You can use two or three illustrations.

Mr. Menzies: Prior to the creation of the Railroad Commission of Florida, the rate on oranges from one of the largest producing points in Florida at that time to Jacksonville and other base points, namely Citra, Florida, was 25 cents per crate.

Mr. Moore: That was prior to the action of 1902, was it?

Mr. Menzies: Yes, that was prior to the creation of the first commission in 1887. The rate from Citra has been reduced until it is now 14 cents per box.

Commissioner Prouty: What is the distance?

Mr. Menzies: The distance to Citra is something over 100 miles, I should say.

Mr. Massey: Is it on your line?

Mr. Menzies: Yes, sir.

Mr. Moore: And on the Seaboard Air Line?

Mr. Menzies: It is farther away by our line from Jacksonville, but I think that is about the distance by the Seaboard, the short line from Citra. The rate at that time from Leesburg, Florida, another

representative shipping point at that period and to-day, was
1732 30 cents per box. It is now 16 cents.

Mr. Moore: Have you the proposed rate?

Mr. Menzies: I will see.

Mr. Moore: Well, the proposed rate will show. The proposed carload rate on oranges from Citra is 10 cents.

Mr. Menzies: The proposed rate on oranges, Leesburg to Jacksonville, at the present time, is 12 cents per box, as compared with thirty cents per box prior to 1887. Now the reduction proposed on oranges throughout the state of Florida would amount, on an average crop of say six million boxes, to about $300,000 per annum. The reductions on vegetables, I estimate would average about $18 per car, and would amount as a grand total between the Seaboard and Atlantic Coast Line, to approximately $150,000 per annum. The total losses would not fall far short of half a million dollars per year.

Commissioner Prouty: Do you mean to all three roads, or to the Atlantic Coast Line and the Seaboard Air Line?

Mr. Menzies: The Atlantic Coast Line and the Seaboard Air Line.

Commissioner Prouty: Have you made a computation, Mr. Menzies, to determine how much your loss of revenue would be if you were to apply the distance scale fixed for the transportation
1733 of pineapples over the Florida East Coast?

Mr. Menzies: I have not.

Commissioner Prouty: I would be glad to have you make out a statement showing with respect to your system, what Mr. Capps did to show with respect to the Seaboard. Give the distance, the present rate, the carload rate, and less than carload rate which would be established under the pineapple scale, and the rate which is proposed by the Florida Commission.

Mr. Menzies: I will prepare such a statement, but there is this contingency in that connection which I desire to mention, and that is that the Seaboard Air Line to certain points in South Florida is the short line, and to certain other territory the Atlantic Coast Line is the short line, and in that case the long line would always have to meet the rate of the short line, and could not secure, therefore, the benefit of the full distance tariff, whatever that may be.

Commissioner Prouty: Of course you do that now.

Mr. Menzies: Where we are the long line we meet the rate of the short line.

Commissioner Prouty: Well, just give in some way an accurate estimate of the amount of loss also which would be imposed upon you; perhaps where you are the long line you might indicate the distance by the Seaboard Air Line, which is the short line.
1734 Mr. Menzies: Yes.

Commissioner Prouty: Just simply to show what your rate would be if that distance tariff were applied. If we were to establish a carload rate on oranges which was three cents less than the present quantity rate that would virtually reduce the rate on oranges three cents a box, since they are practically all moved by carload.

Mr. Menzies: Yes, sir. The average movement or oranges to the

base points, has very largely increased, your Honor, since the last hearing; I mean since the first hearing in this fruit and vegetable case. I have some figures here which I would like to give you in that connection. In 1907-'8, the average loading from points of production to the Florida base points was 215 boxes to the car. in 1908-'9, 256 boxes; 1909-'10, 276 boxes; 1910-'11, 293 boxes. Since 1907-'8, there has been an increase in the average loading of 78 boxes to the car, indicating that shippers are taking advantage of the carload rating from Jacksonville to eastern points which——

Commissioner Prouty: Would not that also indicate that you could afford to carry those oranges at a lower rate now than you applied four or five years ago?

1735 Mr. Menzies: I do not think so.

Commissioner Prouty: Certainly you can carry oranges cheaper when you load 275 to the car than when you load 215 to the car.

Mr. Menzies: In the first place, the less than carload business, whatever it is, has to be moved any way. We have to furnish a car east for five or ten boxes in less than carload shipments. We always provide on our trains, cars to pick up that class of traffic. Now it does not cost us much more for the actual transportation for 100 boxes say, than it would for 50 or even less.

Commissioner Prouty: Do you mean to say it would not cost you any more to transport oranges up to the Florida base point when the average loading is 215 to the car than it does when the average loading is 275 to the car?

Mr. Menzies: There might be some little difference, but I do not think it is as much as it might seem. The reduction, of course, is considerable in the particular cars, the lading which has been increased.

Another reason, however, why our cost of transportation has changed, is on account of the fact that to-day we load a very much larger percentage of our orange traffic and citrus fruit traffic in refrigerator cars, and that entails a southbound empty move-

1736 ment from Jacksonville, in practically every case. Heretofore the great bulk of the movement has been in ventilator cars. At one time, practically all the traffic moved that way. Now we have demands from the shippers that these cars be furnished and we are threatened with claims in the event we do not furnish them.

Commissioner Prouty: Is there any difficulty in loading 300 boxes in a refrigerator car?

Mr. Menzies: I do not think so.

Commissioner Prouty: Can you load more than that?

Mr. Menzies: I do not know just what is the actual capacity of a refrigerator car.

Commissioner Prouty: Do you know how many tiers wide boxes are loaded in these refrigerator cars?

Mr. Menzies: I do not.

Mr. Boggs: I can state I have been loading grape fruit 348 regularly in refrigerator cars.

Commissioner Prouty: I think if you had the Armour equipment

here, the fruit express equipment, you will find you can load substantially 350 boxes in the car, certainly when they move under ventilation. As you load oranges and grape fruit here in Florida, how many tiers wide do you load, Mr. Chase?

1737 Mr. CHASE: Six.

Commissioner PROUTY: That leaves a space between each tier?

Mr. CHASE: Yes.

Commissioner PROUTY: For the circulation of the air?

Mr. CHASE: Yes, we always load just as they do in California, and the capacity of the car depends upon the dimensions.

Commissioner PROUTY: The ordinary refrigerator fruit express car will load 340 to 350 boxes?

Mr. CHASE: You can load in excess of that. I would like to say regarding the equipment, that you know the changes which took place in California where the carriers put on their own refrigerator equipment, and released the Armour equipment.

Commissioner PROUTY: Yes, I understand that.

Mr. CHASE: The Armour equipment is seeking business, and we are solicited to load under ventilation their cars, and they have the cars in the territory, and they are idle, and they want to earn something, and they are anxious to have them loaded.

Commissioner PROUTY: I think the railroads will ultimately find it to their advantage to use that equipment, after the first of December, anyway.

1738 Mr. Chase: It is desirable for several reasons. First, it protects against freezing, and second it protects against pilfering; we have fewer claims for pilfering than with ventilated cars, and if there is any expense on the part of the railroads in placing cars, it is more than offset by the smaller claims they have to go up against, and the growers and shippers prefer them because they have so much trouble in collecting any claims for frozen fruit in the ventilated equipment. Those things are to be taken into consideration in the matter of refrigerator equipment down in this territory.

Commissioner Prouty: You may proceed, Mr. Menzies.

Mr. Menzies: I would like to give you a few figures as to the movement of refrigerator cars for the past five or six years. This statement shows the movement of oranges in refrigerator cars not under ice.

In the season 1905-'6, the movement was 1291 cars; 1906-'7, 1481 cars; 1907-'8, 1883 cars; 1908-'9, 2932 cars; 1909-'10, 3,377 cars.

Commissioner Prouty: Does that cover both your orange and vegetable business?

Mr. Menzies: No, this is merely oranges. Vegetables, as a rule, when loaded in refrigerator cars, are under ice. Now, no

1739 additional charge is made for the refrigerator cars from Florida not under ice, which is entirely different from California, as we all know. The charge from California to New York being $75 when iced before being sent to the packing house, is $15 in addition.

Commissioner Prouty: When the oranges move in the refrigerator car without ice, no charge at all is made for the refrigerator car from California. The citrus fruit crop is entirely moved in these combined ventilator refrigerator cars from California. They could not very well be moved in any other way. I think finally you will do the same thing here, you will find it is better to move this entire crop in a car which can be used either as a refrigerator or ventilator car.

Mr. Menzies: That may be so, but I merely want to draw your attention to the enormous increase in expense by reason of furnishing refrigerator cars.

Commissioner Prouty: Why, it costs a little more to furnish a car of that type than it does the ordinary ventilator car; perhaps you may have to move some more back empty, but your empty movement is south anyway, is it not, from the north?

Mr. Menzies: Yes.

Commissioner Prouty: They find there they load about 75 per cent of those refrigerator cars back.

1740 Mr. Menzies: That is from the east to California?

Commissioner Prouty: From the east to California.

Mr. Menzies: We load practically none.

Mr. Moore: Will you be able to furnish figures showing the carload movement of vegetables from your territory for some stated period as contrasted with less than carload movement?

Mr. Menzies: I can furnish such a statement, but I did not prepare that data for this hearing.

Mr. Moore: Would your Honor like to have a statement that would show that?

Commissioner Prouty: Yes, I would like to have both Mr. Menzies and Mr. Capps show the carload movement from base points north at the present time, as compared with the carload movement three or four years ago.

Mr. Moore: What period would you select?

Commissioner Prouty: If you could give the year ending 1910 and contrast it with the year ending 1907.

Mr. Menzies: Yes.

Mr. Capps: Is that on citrus fruits and vegetables?

Commissioner Prouty: No, only on vegetables.

Mr. Moore: It seems to be generally admitted that citrus fruit generally is in carloads.

1741 Commissioner Prouty: Yes.

Mr. Moore: Speaking of matters which have occurred since the decision of the old case of 1908, has there been anything in connection with the increase in the production of grape fruit, that has added to the advantage of the shipper?

Mr. Menzies: There has been in the last few years a radical increase in the production of grape fruit; in other words, the percentage of grape fruit and the total citrus crop is very much larger than it was. Eight or ten years ago, the grape fruit, for instance, would not, I should say, exceed from five to ten per cent of the total crop, and while there are various estimates as to what the percentage of the

grape fruit to-day is of the total citrus crop, I should say that a fair statement would be from 25 to 35 per cent.

Mr. MOORE: They take the same rate as oranges?

Mr. MENZIES: The rates on grape fruit are the same as on oranges. It has been thoroughly demonstrated by both sides, I believe, at previous hearings, that there was practically no competition between Florida and California on that commodity; the California product is very inferior, and does not compete with Florida.

Mr. MOORE: The Cuban product is very inferior, is it not?

1742 Mr. MENZIES: And the Cuban product to-day is also inferior. I understand that they have some small shipments from Porto Rico, that are a better class than that grown in California or Cuba, but I do not understand that even that compares with the Florida fruit.

There is another point, however, in that connection, and that is that grape fruit and other citrus fruits shipped from Cuba and Porto Rico, have to move by the water, and while the rates are low, the Florida shippers do not like water transportation, and even at a cost for instance of eleven cents a box, they prefer to send their business by rail, and they do so; I mean the larger shippers.

Mr. MOORE: Now one other thing that applies to the period since the decision of 1908; what change has occurred in the relations between the rates from California and the rates from Florida? Have you any statement as to that, that you can read into the record briefly, or summarize in your own way?

Mr. MENZIES: When this question was last heard, I testified that under the old rates that Florida had an advantage over California to 82 per cent of the population of the United States. I showed the north and south lines drawn on the map of the United States

1743 indicating what the dividing line was between California and Florida. Since that time the Commission has ordered a great many reductions, and Florida now has an advantage to a very much larger percentage than formerly. In other words, instead of having an advantage of only eighty-two and a fraction per cent, I believe it was it must be increased I should say three or four per cent anyway. The rate from the average point of production on the Atlantic Coast Line to New York all rail is seventy per cent of the rate from California. To Philadelphia, 68 per cent. To Chicago, 78 per cent. Milwaukee, 80 per cent——

Commissioner PROUTY: What do you mean by eighty per cent?

Mr. MENZIES: That is the rate per hundred pounds from average point of production to Florida.

Commissioner PROUTY: What do you take as the average point of production?

Mr. MENZIES: The 18.6 cents per box, which was the average on our line as ascertained prior to the previous hearing, 18.6. The average on the Seaboard was considerably less than that figure, but I am using the 18.6 cents just now, notwithstanding the fact that I believe the average at the present time is not more than 17 cents per box.

Commissioner PROUTY: If that is so, it is not possible that
1744 to apply the pineapple scale would work a reduction of five cents a box in your rates, because that scale does not reduce the shorter distance rate until you get up to 15, 16 or 17 cents at all. It increases those rates.

Mr. MENZIES: But the crop is now moving northward, and we have quite a number of points, and a very important territory in fact that takes a rate of ten cents a box.

Commissioner PROUTY: I know it, and the pineappale scale would work an advance in those rates, as I remember it. There would only be a reduction of one cent. We allowed a carload rate of nine cents from those points.

Mr. MENZIES: Of course, not being familiar with the pineappale scale, I am unable to go into that question fully, but the point I desire to make in that is, even if we were given for instance a rate of 15 cents from points between Jacksonville and Sanford, we could not take advantage of that on account of water competition, and a very considerable crop is grown between this point and Sanford, and if we have no freezes for the next year, I presume the crop will be very much larger than it is. I was giving some figures——

Commissioner PROUTY: You need not proceed with that. You were showing the relative rate from Florida and California.
1745 I believe the Commission said in its last report in this case, that the rate from Florida as compared with California, was about as favorable as could be expected.

Mr. MENZIES: Yes, sir. Well, I desire just to make one statement, if you please, in that connection, that in addition to these low all rail rates from Florida, the shippers also have the advantage of the rail and water rates, and the rail and water rates from the average point of production in Florida to New York, for instance, is 58 per cent of the California rate. Now, from California, a considerable part of the crop is moved under ice, and that makes a further difference between the total charge from this statement as compared with California.

Mr. MOORE: In addition to those matters you have spoken of which have occurred since the former decision, have you anything further to say as to the loss and damage claims, whether they have increased or not? Have you any figures on that?

Mr. MENZIES: I have no figures.

Commissioner PROUTY: I think we will hardly go into that, Mr. Moore.

Mr. MOORE: All right. There is just one little matter I
1746 want to call your attention to here. I think it was stated in the formal report that your average rate from producing points to the base point was 25 cents, was it not?

Mr. MENZIES: Yes.

Mr. MOORE: Have you prepared that map with a view of showing in a general way, what your rates are from the producing points up to the base points, the map that the Commissioner has?

Mr. MENZIES: Yes, sir, I have prepared such a map, and I have

made a comparison of the crop of citrus fruits produced north and south of a line drawn across the peninsula.

Mr. MOORE: My only idea, sir, was to show that probably there was an error in assuming that his average rate was as much as 25 cents.

Commissioner PROUTY: In the original case he assumed or asked us to assume a typical point, and the rate from Arcadia was 25 cents. After that case had been decided, Mr. Menzies testified that actual shipments from points on his line to base points netted only 18.5 cents, as I remember, which shows that the oranges moved from nearer points than that than we had supposed, when we heard the original case. I understand him to say now that the area of
1747 production is rather moving north, and that to-day the rate does not probably exceed 17.5 cents from point of production to the base point.

Now my statement is that if that is so, to apply the pineapple scale could not possibly reduce the average movement five cents a box, because to apply that scale would reduce very slightly the short distance rates.

Mr. MENZIES: The reduction, your Honor, during the season 1909-10 from points north of the 10 cent point——

Commissioner PROUTY: North of this black line you have drawn there.

Mr. MENZIES: Yes.

Commissioner PROUTY: Let the stenographer mark this as an exhibit.

(The paper so offered and identified was received in evidence, and thereupon marked Defendant's Exhibit No. 4, Witness Menzies, March 2, 1911, and the same is attached hereto.)

Mr. MOORE: Running from in the neighborhood of Brookeville over to Kissimee.

Commissioner PROUTY: You may proceed, Mr. Menzies.

Mr. MENZIES: The production north of that line in 1910 was 52 per cent of the total. Of the entire movement this season to Febru-
ary 25th, 62 per cent moved from points north of that line,
1748 showing thus that the business has increased at the points taking the lower rates to base points.

Commissioner PROUTY: Do you know about the average movement of oranges on your line, the average haul?

Mr. MOORE: We will get that information and supply it.

Commissioner PROUTY: I would be glad to have you do so.

Mr. MOORE: You wish it to the base point from the producing points?

Commissioner PROUTY: Yes.

Mr. MOORE: We will make it to Jacksonville.

Commissioner PROUTY: Would that be fair? It seems there are three base points with the Atlantic Coast line, High Springs, Gainesville and Jacksonville. Now my understanding is that this orange traffic from the west side would actually move through High Springs in a great many cases. Is that right Mr. Menzies?

Mr. MENZIES: That is right.

Commissioner PROUTY: Would it move through High Springs to New York?

Mr. MENZIES: Yes, sir.

Commissioner PROUTY: So it seems to me we ought to take the distance to the nearest base point whatever that may be. If
1749 they choose to move it to Jacksonville, they move it voluntarily the longer distance when it might move the shorter distance.

Mr. MENZIES: But this feature of that case ought to be considered, High Springs and Gainesville are in fact interior points in the State of Florida. Gainesville is a producing point itself in large quantities of vegetables, and formerly was also a large producer of oranges. From Gainesville to the Georgia line, the distance is very much greater than from Jacksonville to the state line, and the Atlantic Coast line simply adopted Gainesville and High Springs not with a view of adjusting rates on that basis, but of dividing the rates with our various connections. Jacksonville is the basis for everything in the state of Florida.

Commissioner PROUTY: Yes, but the traffic does actually move through Gainesville and High Springs, as I understand it?

Mr. MENZIES: Yes.

Commissioner PROUTY: When the traffic actually moves through those points, if we are fixing the basis rate, the rate ought to be to those points. Of course, as you know, I think that the tariffs
1750 which you now publish giving the rate from the point of origin to the point of destination, and eliminating the base point altogether, is the proper form of tariff. I think that is right. But as long as we have a base point, and as long as we construct with reference to a base point, it seems to me we ought to take the nearest base point through which the traffic moves.

Mr. MENZIES: Take this illustration. Gainesville is the base line on the Atlantic Coast line for business from Ocala. Ocala is only forty miles from Gainesville. It is about 100 miles from Jacksonville. The Seaboard is the short line, and it makes the through rate from Ocala.

Commissioner PROUTY: Through to where?

Mr. MENZIES: On Jacksonville.

Commissioner PROUTY: But you would make the base rate on Gainesville?

Mr. MENZIES: No, we met the rate of the Seaboard, but applied the arbitrary up to Gainesville, instead of applying it to Jacksonville. While our distance is only 40 miles, and their distance is 100 miles, our distance north of Gainesville through Jacksonville is very much greater than their distance from Jacksonville north to Georgia.

1751 Commissioner Prouty: You mean to Savannah?

Mr. MENZIES: Yes.

Mr. MOORE: I referred a while ago to a statement you made up comparing the revenue which would accrue on this traffic up to the base point with the revenue accruing from other traffic in the opposite direction. Will you file that as an exhibit and make any brief

reference to it you may desire. I think the Chairman of the Florida Commission stated something in the way of comparing it.

Mr. MENZIES: I did not prepare such a statement in the form of an exhibit, but I can have it copied off. I have the figures in a memorandum.

Mr. MOORE: What commodities have you used?

Mr. MENZIES: I have compared the present rates on oranges with the rates on grain, machinery, farm wagons, agricultural implements, and structural iron. I have also made a comparison of the proposed rates with some of these commodities and others. This statement shows for instance that under the present rate from Bartow, Florida to Jacksonville we earn $51 per car. That is based on a carload of 300 boxes. On grain, based on 40,000 pounds, we would earn $84; for machinery $68; on farm wagons per carload
1752 20,000 pounds, $82; agricultural implements per carload $82; structural iron per car 40,000 pounds, $109. Now that merely illustrates the comparison. I have a great many other commodities.

Commissioner Prouty: That all goes to the question of your reasonableness of your orange rate, which was threshed out in the old case.

Mr. Menzies: Now the other statement is made with relation to the proposed rates. From Bartow on a carload of 300 boxes of oranges to Jacksonville or beyond, it would be $42; on vegetables per carload of 420 crates, $87.80; on fertilizer $44.80; on salt per carload of 20 tons $51.60; cement per carload of 20 tons $43.60; farm wagons $82. These statements merely show that on dead freight not requiring expeditious service we would earn under the Railroad Commission's figures very much in excess of what they propose on oranges and vegetables.

Mr. Moore: Will you please file as part of your testimony the protest which you made to the Florida Commission in the shape of a letter or statement that you wrote to them, a copy of which I think was sent to the Chairman of the Commission. That is similar to the one Mr. Capps put in. Hand it to the stenographer.

1753 The statement so offered and identified was received in evidence and thereupon marked Defendant's Exhibit 5 (Witness Menzies) received in evidence March 2, 1911, and is attached hereto.

Mr. Moore requested that the letter be spread in the record, and it is as follows:

NOVEMBER 8TH, 1910.

The Honorable Railroad Commission, State of Florida, Tallahassee, Florida.

GENTLEMEN: I duly received through your honorable chairman a copy of notice dated October 13th, addressed to the Atlantic Coast Line, and various other railroad companies in Florida, stating that a meeting would be held in Jacksonville on November 10th, for the purpose of considering a reduction in the rates on fruits and vegetables from points of production to Florida base points, for beyond. I also received statement accompanying said notice showing the present and proposed rates. In this notice you say that the existing

rates are excessive, unreasonable and discriminatory, and you urge upon us the propriety of making a reduction therein.

At the outset I desire to say that the rates which this com-
1754 pany is now charging on fruits and vegetables from the various points of production to the Florida Base points were put into effect some years ago at the instigation of the Florida Railroad Commission and over our protest and that of other carriers in the State. In substantiation of this statement, I beg to quote extract from the Sixth Annual Report of your Honorable Commission, dated March 1st, 1903, as follows:

"The 1st of October, 1902, was set for a hearing for the Atlantic Coast Line, Seaboard Air Line, Jacksonville and Southwestern, Gainesville and Gulf and Tavares and Gulf Railroads. At the appointed time, the officials of these roads appeared, and endeavored to have consideration of the matter postponed until a future date, contending that they had not had sufficient time in which to ascertain how much reduction in their revenues the proposed rates would make. The application for a postponement being denied, the rates were then taken up with each road separately; the time required to do this extending through several days, resulting in an amicable settlement of the freight rates on fruits and vegetables to Florida base points for beyond, which carries a reduction of from
1755 one to six cents per box from the fruit and vegetables growing sections; the greatest reductions being at points from which the largest shipments are made."

The revision of these rates was considered for a number of years as the following extract from report of the Commission dated March 1st, 1901, will indicate:

"To support their contentions, the railroad representatives presented a striking array of figures. The increased expense of operating railroad properties, due to the great advance in the wages of labor, and the price of material of every character, was set out in great detail, as bearing upon the question at issue; and it was finally contended that none of the railroad companies were making as much profit out of their freight business as they are legally entitled to, hence, to reduce rates on such important revenue producing articles of freight as fruits and vegetables would be unjust, unreasonable and unwarranted by law. After hearing these arguments, our desire to do full justice to all parties interested in this question decided us to carry the matter over until we could dispose of other very important business which was pressing, and have time to make a careful analysis of the conditions presented. It is
1756 our purpose to call this question up for final disposition at an early date."

I merely quote the report of 1901 for the purpose of showing that the Commission having jurisdiction at that time considered seriously the question of revising these rates, but action was deferred presumably for the reason that they found the railroads could not afford any diminution in their revenues. The succeeding Commission of March 1st, 1903, of which your Honorable Chairman was a member, made the reductions cited in the report above quoted.

In this connection I would also call your attention to the reduc-

tions which had been made in these rates by the Commission prior to 1901, which were of a very drastic nature, and which contributed very largely to the placing of quite a number of the Florida railroads in the hands of receivers.

The Florida Railroads never have in the past, nor do they now make a reasonable profit on their investments, and much of the property of this company in Florida yields no return whatever. The fruit and vegetable business handled by the Atlantic Coast Line is no greater today than it was at the time the Florida
1757 Commission, several years ago, established the existing rates to the Florida base points. In fact, the estimated crop for the present season is considerably less than the crop of 1894-1895, when the rates were very much higher than they now are. Our earnings on the orange and vegetable business, and from traffic that is produced thereby, constitute a large percentage of the total revenue earned by this company over a very considerable part of our railroad lines in Florida, and it naturally follows that any reduction in the rates on these commodities would seriously affect our welfare. We are being called upon continuously for more expedited movement, for improved equipment, additional sidetrack facilities, et cetera, et cetera, and these things cannot be furnished if our rates are to be continually reduced.

Unlike other States, the railroads in Florida must live on the revenue derived from commodities grown in the State and shipped therefrom, together with what is shipped from other States and consumed within its borders. No through traffic passes over Florida en route from one State to another, in fact, there is no other State in the Union where this unfortunate condition from a railroad standpoint exists. The railroad must make enough revenue out of
1758 their local traffic in Florida to bear a fair share of the expense of the property, as there is no other source from which they can derive revenue.

It is likewise true that the conditions under which traffic is handled in Florida differ radically from the handling of property in other States. The perishable products of Florida require the utmost dispatch, and the equipment which has been especially constructed for that business, must be furnished promptly on request. This results, as a rule, in an empty haul of the equipment in one direction, adding greatly to the cost of transportation. In computing the cost of moving the Florida Fruit and Vegetable crops the southbound movement of empty equipment, should therefore, be taken into account.

It is unnecessary, I hope, for me to dwell upon this feature of the case, or the results of the operation of our Florida property at any greater length, because the facts concerning these matters are thoroughly known to the members of the Commission. To go into more detail would be simply to repeat information which you must already possess. We are not able to stand any further reduction in our revenue on Florida fruits and vegetables, and this import-
1759 ant feature must also be known to you.

I however, desire to call your attention to a report and

order of the Interstate Commerce Commission dated — 25th, 1908, extract from which reads as follows:

"From an examination of the elaborate figures which were introduced upon the trial showing the character of the traffic hauled by these Florida roads, the conditions under which it is handled, their earnings, and the cost of operation running through a series of years, it is difficult to see how these railroads can be expected to transport in a suitable way this fruit and vegetable traffic from points of production to these basing points for a less sum than they now receive. It is difficult to see how, even upon the present tariff these lines can in the immediate future expect to pay any considerable return upon their investment. We feel that these local rates, although they are high in comparison with other local rates, are as low as should be established under all the circumstances".

This decision on the part of the Interstate Commerce Commission, as you are well aware, was made after an exhaustive
1760 investigation of the whole question of rates on fruits and vegetables from Florida producing points to Eastern and Western markets, etcetera.

While I have endeavored thus to outline reasons why no reduction should be made in the existing rates on fruits and vegetables to Florida base points, which reasons must be apparent to you, but may not be understood by shippers or others less familiar with conditions than yourselves, we wish it distinctly understood that we do not yield to your Honorable Commission any jurisdiction in this matter, the question being one to be determined solely by the Interstate Commerce Commission.

Yours truly,

(Signed) JAMES MENZIES,
General Freight Agent."

1761 Mr. Moore: Is there anything else?

Mr. Menzies: Yes, there is one point I desire to call attention to which I do not think was gone into at the previous hearing, and that is that part of our line in Florida producing oranges and vegetables produces practically nothing else; therefore when the crop decreases as it did this year, as compared with last, nearly 2,000,000 boxes, that loss comes largely out of part of our line that cannot be made good in any other direction. Our line for instance from Bartow to Fort Myers is practically altogether dependent upon citrus fruit and vegetables. The same can be said of our Sanford-St. Petersburg line, 154 miles from Sanford to St. Petersburg. We move a little naval stores over that line, but very little, and that is continually diminishing.

Mr. Moore: That is all.

Mr. Massey: As I stated, I do not propose to go into the reasonableness of these rates, but I would like to ask one or two questions to get the matter straight.

Mr. Moore: If permissible, if your Honor please, in replying to the chairman of the commission, I should undertake to show by

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Mr. Menzies that for a period of four years prior to the time
1762 of the reduction by the Florida commission, the movement of citrus fruits was heavier than in the succeeding four years, I did not understand whether you wished to go into that subject.

Commissioner Prouty: No, that seems to be ancient history. Let me ask you if I have not already done so, what would you say as to the application of the distance tariff.

Mr. Menzies: I referred to the difficulty on account of the Seaboard being shorter than the Coast Line in Florida in some cases and the Coast Line being shorter than the Seaboard in others. If we got a mileage tariff we could not use it in a great many cases.

Comr. Prouty: I remember now. You may proceed Mr. Massey.

Mr. Massey: I believe I have no questions. Mr. Boggs has some questions.

Mr. Boggs: When you spoke of most of the vegetables in refrigerator cars moving under ice, you meant merely to speak for the Atlantic Coast Line and not for the Florida East Coast?

Mr. Massey: The Atlantic Coast Line and the Seaboard.

Mr. Boggs: And not for the Florida East Coast?

Mr. Menzies: No.

Mr. Boggs: When you spoke of the area of production
1763 moving north, do you consider that that is a temporary or permanent movement? Is it not a fact that the large planting of new groves in south Florida is rapidly going to roll it the other way?

Mr. Menzies: No, I do not think so. I think the greatest production will be north of the 18 cent point.

Mr. Boggs: Is it not a fact that the increase north of that line in the last ten years has been due to the gradual restoration of the frozen groves principally?

Mr. Menzies: That I should say would account for a considerable part of it.

Mr. Boggs: Is not the principal area of the planting of new groves in the southern part of the state?

Mr. Menzies: What do you mean by the southern part?

Mr. Boggs: Well, say south of Orlando?

Mr. Menzies: Well, I regard that as the northern part for the purposes of my statement.

Commissioner Prouty: He regards the southern part as south of the 18 cent rate point.

Mr. Massey: He has drawn the line south of Kissimmee.

Mr. Boggs: Is there not a very heavy planting, larger proportionately than in any other part of the state, south of that
1764 Kissimmee-Brooke-ville line which you indicate?

Commissioner Prouty: It hardly seems to me that is of very much importance. We will try to make a rate so that oranges can move from any part of the state.

Mr. Boggs: These rates which you name there in comparison with these fruit and vegetable rates, were class rates were they not, on structural iron and salt and grain?

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Mr. Menzies: No, these are commodity rates, most of them. Some are class rates.

Mr. Boggs: But they are not on commodities which are produced in the territory, are they?

Mr. Menzies: No, they apply on commodities moving south bound.

Mr. Boggs: That is all.

Mr. Massey: I want to ask you one question about Tariff I. C. C. No. 2, in which the Atlantic Coast Line participated and in which the tariff is made up from points of origin to points of final destination. In making up that tariff were the three base points of the Atlantic Coast Line taken into consideration or were they all based on Jacksonville?

Mr. Menzies: Of course after having appointed the base points, we used them in the construction of our tariff.

1765 Mr. Massey: That is to say you used those three base points Gainesville, High Springs and Jacksonville?

Mr. Menzies: Yes.

Mr. Massey: That is what I want to know. Now go on and make any explanation you want to.

Mr. Menzies: But the rates which we show to the three base points from territory competitive with the Seaboard for instance, are the same as the Seaboard charges to Jacksonville.

(Witness excused.)

F. W. KIRTLAND, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Moore: The Florida East Coast rates on citrus fruits and pineapples were originally less per mile for short that for long distances?

Mr. Kirtland: Yes, sir, I can explain it in this way, when the Florida East Coast was originally built it paralle-d the St. Johns River practically all of the way. The St. Johns River crossed us at Palatka, Orange City and Enterprise, and in establishing rates on oranges we had to fix them at water crossings the same as the

1766 Clyde Line boat rate at points near by, or adjacent; we had to carry them just as much higher than the boat rate as to get a share of the business in competition with hauling them to the Clyde boat; so all of those orange rates were not the commission's standard tariff rates, but were lower than the commission's standard tariff because they were forced on us by water competition.

Mr. Moore: They were water competitive rates.

Mr. Kirtland: They were water competitive rates. So as the line was extended down beyond the scope of that water competition we carried the standard rates prescribed by the commission.

Mr. Moore: Because the water competition did not obtain?

Mr. Kirtland: Yes, sir, and that is how it came about that our rate for the short distances appear to be relatively lower per mile than for the longer distances. They were water competitive rates. So when the pineapple rates were established, we simply made the

rates on pineapples the same as the rates on oranges because that had been the customary basis. As matter of fact our low rates for short distances were merely paper rates, there were no pineapples from that territory and it was a matter of indifference to us what rates were carried on pineapples.

1767 Commissioner Prouty: Do you feel this water competition on oranges now?

Mr. Kirtland: Yes, sir. We still carry those rates to all water competitive points.

Mr. Moore: And are those long distance rates really based on the standard of water competitive rates?

Mr. Kirtland: These pineapple rates? As we understand the commission really reached the conclusion that our rates were not.

Mr. Moore: And they lined up the long distance rates to conform with the short distance water competitive rates?

Mr. Kirtland: Yes, which they assumed we voluntarily put in, but they were really forced on us.

Mr. Moore: That is our reason why we do not think the pineapple rates ought to control the construction of our rates.

Commissioner Prouty: What is the highest rate you make in competition with the eater on oranges?

Mr. Kirtland: Well, the boat rate is ten cents a package, any quantity.

Mr. Prouty: When you get above ten cents a package the rate is not a water competition rate?

Mr. Kirtland: It is influenced by it. You take that O. &

1768 W., Orange City Branch, we scale back two or three cents a package, and the further back we get from water, the rates being still lower than the standard scale which we were permitted to charge. For instance, take from Lake Helen this year, we thought we had the rate sufficiently low to protect us against water, but we found probably 40,000 boxes were hauled up through the water, showing the rate was still too high as against water.

Commissioner Prouty: What was your rate from Lake Helen.

Mr. Kirtland: Lake Helen is 18 cents.

Mr. Boggs: You do not feel any water competition at points south of Palatka on your main line, do you now?

Mr. Kirtland: No, not on the main line.

Mr. Boggs: So that these water competitive rates apply to your branches rather than to your main line, is not that a fact?

Mr. Kirtland: You mean at this time?

Mr. Boggs: Yes.

Mr. Kirtland: That is true at this time. It was not formerly true when those pineapple rates were put in.

Mr. Boggs: Say take the territory in the vicinity of Rock Ledge, did they carry across to the St. Johns river?

Mr. Kirtland: Yes, sir. Indian River points all moved

1769 through by way of Daytonville and the old O. & W. through Dodson.

Mr. Boggs: But you have absorbed the O. & W.

Mr. Kirtland: I was simply giving a history of the rates, how

they were originally established. I am not telling you the conditions there now.

Mr. Boggs: What I want to bring out is, you absorbed the line that caused that water competition?

Mr. Kirtland: It is part of our system now, yes.

Mr. Moore: I was trying to account for the short distance rates which the enforced on us as a standard and showing how they had tried to conform to them as compared with the short distance.

Commissioner Prouty: Have you any further testimony?

Mr. Moore: No, I think not.

Commissioner Prouty: Have you any further testimony Mr. St. Clair-Abrams?

Mr. St. Clair-Abrams: We are very anxious to have Mr. Parrott appear tomorrow.

Commissioner Prouty: To what would Mr. Parrott testify?

Mr. St. Clair-Abrams: To the situation existing now which calls for no further reduction of our revenue but rather for an in-
1770 crease of revenue, which we hope to get from increased business.

Commissioner Prouty: Could he add anything to what you have already said on that point?

Mr. St. Clair-Abrams: I do not know, except that he could, as he has prepared that, show the amounts necessary to be spent in the next four or five years in operating expenses in excess of those that we have expended for the last two or three years. Your Honor has noticed the very low rates we have been carrying.

Commissioner Prouty: In view of the fact that your cost of maintenance is so much below the average, it seems to me that that rather appears without Mr. Parrott's testimony.

Mr. St. Clair-Abrams: We desire to show this, that we are compelled each year to expend so much for ballast, which we have had to stop, and that we have some equipment which we must replace in the next three or four years and so many miles of rails we are compelled to replace and unless we are allowed to retain our present rates it will be impossible for us to do that necessary work pertinent to operating expenses. That is the position we take.

Mr. Beckwith: I do not think it will be possible for Mr. Parrott to be here. He is a very ill man. He can submit it after-
1771 wards by affidavit.

Commissioner Prouty: It hardly seems to me that we will sit here and take the evidence. Your statement shows what the situation is and the fact speaks more eloquently than your statement does. If you have only expended $400 a mile for the last two or three years on the maintenance of your way and structures, you do not need any testimony to show you must spend more money.

Mr. St. Clair-Abrams: I quite agree with your Honor, but we must have the money out of earnings to meet it.

Mr. Massey: I have two or three witnesses to examine.

W. C. TEMPLE, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Massey: Where do you live, Mr. Temple?

Mr. Temple: Winter Park, Orange County, Florida.

Mr. Massey: Have you been interested in the production of citrus fruit in Florida, and if so, for how long?

Mr. Temple: Well, continuously for the past eleven or twelve years and intermittently for more than thirty years.

1772 Mr. Massey: What position, if any, do you hold with the Citrus Exchange?

Mr. Temple: I am secretary and general manager of the Florida Citrus Exchange and I am the principal owner and president of the Willcardo Fruit Company, operating the Winter Park Packing House.

Commissioner Prouty: Can you tell us what proportion of the citrus fruit crop the exchange has been handling?

Mr. Temple: I could not tell you this year for the reason that the movement is not finished yet and we cannot tell. We handled last year 25 per cent, approximately, aggregating something over 5,000 cars.

Mr. Massey: In your opinion would a carload rate from the points of origin in Florida to the Florida base point benefit the small grower.

Mr. Temple: You mean if such a rate were put into effect lower than the broken car rate?

Mr. Temple: Undoubtedly, and especially in our organization, for the reason that we bring in our co-operative organization many small shippers who in their entirety compose an association, and in one carload may be the fruit of many shippers. I for instance have had from our Winter Park House 15 to 20 growers'

1773 fruit in one single car of fruit, and we have very many members who do not produce nearly a car of fruit for their entire stock.

Cross-examination:

Mr. Moore: Unless you had that forwarding or consolidation arrangement, or agency, it would be a disadvantage to the small shipper?

Mr. Temple: I do not see why, because it is not an agency arrangement, but it is a co-operative arrangement of the growers themselves.

Mr. Moore: I just want to ask you one question. In the Express Company case heard here within the last ten days, did you testify in these words: I cannot give you the text, "The small shipper cannot load solid carloads: he is handicapped on account of having to ship in carload."

Mr. Temple: Handicapped on account of having to ship in less than carloads. The plea was for the small grower to get his stuff into the hands of the buyer, he must depend entirely on the express

company, because the small shipper producing less than a car load, or being able to load in less than a carload, sending by freight owing to the delay in transit, could not possibly get his stuff out by
1774 freight in time to arrive in a sound marketable condition.

Mr. Moore: You must have been misquoted in the extract handed me.

Mr. Temple: Yes, you can see how unreasonable it would be.

Mr. Moore: If no consolidation were possible such as you have spoken of, there would be a wide difference between the carload and less than carload, and that would tend to concentrate the business in the hands of a few people, would it not?

Mr. Temple: I hardly would be competent to say that. If you mean that a man having only ten or fifteen or twenty boxes to ship could not arrange to ship that with other fruit to make a carload, and there was a big difference between the small shipment and the carload shipment plus the slow movement of the less than carload shipment, of course it would mean ruin.

Mr. Moore: After all, when you gentlemen are asking for the very low car load rates it is to get practically the rates that you can send the stuff on and reduce your transportation charges by using the carload rate.

Mr. Temple: What we want with carload lots is able handling, quick despatch and arrival at the other end in sound condi-
1775 tion.

Mr. Moore: And you expect to use the carload rates in order to reduce transportation charges and reduce the revenues of the company?

Mr. Temple: We expect to, we ship very little in less than carload lots; in fact, we discountenance the shipment in less than carload lots.

Mr. Massey: Is it not a fact that several neighbors, several shippers who have less than carload lots will combine and ship a carload in one man's name?

Mr. Temple: Yes.

Mr. Massey: That is a usual occurrence?

Mr. Temple: Yes. In many cases they have been obliged to do that with various commodities, for the reason that when the transportation companies discovered the matter they would make them pay the local rates although solid cars were made up.

(Witness excused.)

JOSHUA C. CHASE was recalled as a witness, and testified as follows:

Mr. Massey: When you were on the stand a while ago and when I asked you about the orange tariff, I omitted to ask you something about the vegetable tariff. Will you please make any state-
1776 ment in regard to that matter which is pertinent to this case?

Mr. Chase: The Atlantic Coast Line already have a vegetable tariff in effect to the eastern markets constructing the rate in the same manner, that is, taking the any quantity rate up to the base point plus the through rates established by the commission, and we

feel as long as the entire service is performed by the growers and shippers in loading and stripping and putting it in condition to be transported, that there should be a difference between the any quantity rate put in a great many years ago and the car load rate.

Commissioner Prouty: That is now a carload rate applies from the point of origin.

Mr. Chase: To the eastern markets, yes, sir. To the western markets Mr. Menzies said I believe, there was a joint tariff under construction of the Seaboard and Atlantic Coast Line and the other carriers.

Commissioner Prouty: We ordered a carload vegetable rate from the base point.

Mr. Chase: Yes.

Commissioner Prouty: But not from the point of origin?

Mr. Chase: Yes.

1777 Commissioner Prouty: What has been the effect of that, has the carload rate been availed of?

Mr. Chase: Yes, sir, the loading of cars into the eastern market and into the southern market and in fact all markets reached by Florida markets since your order went into effect has had a very beneficial influence in making heavier carloads and greater earnings per car for the carriers.

Commissioner Prouty: Has the car loading occurred at Jacksonville or at the base point, or rather at the point of origin?

Mr. Chase: At the point of origin, at the packing house or at the point of production. Now there are a great many producing groves throughout the state, I have one in which I am interested, where the packing house is remote from an agent. The cars are loaded at that point by the growers and shippers and the conductors who pick up the cars give a receipt. That receipt is exchangeable for a bill of lading. We are forced to pay the rate, the full tariff you might say, up to base point, and in fact to destination, but we get a shipper's loading count, and if there is any shortage, any stealage in transit or at destination, that is a loss that we very often have to bear

1778 unless we can produce long affidavits that it did contain at the point of loading the full number of boxes specified.

Commissioner Prouty: Well you do, I suppose, consolidate some cars at Jacksonville?

Mr. Chase: To a very limited extent.

Commissioner Prouty: Then practically all the carload shipments are carloads from the point of production.

Mr. Chase: Yes.

Commissioner Prouty: To destination?

Mr. Chase: Yes, sir, to destination.

Commissioner Prouty: Of course under the old system that was not so, they were brought up here to Jacksonville in less than carload quantities, and they were to a certain extent consolidated by the carrier himself here at Jacksonville. That is not done now at all?

Mr. Chase: It is done to a limited extent, but it is much more limited than formerly. Under the old rates, the any quantity rates to the eastern markets the growers would ship you might say to the

east at the same rate, and the Atlantic Coast Line, for instance would very often collect from roads coming into Sanford. There they would start over these miscellaneous cars and would bring
1779 them into Jacksonville. Very often they would be resorted at Jacksonville and possibly resorted at some other point in transit, that is the different local lots be distributed.

Commissioner Prouty: The work of handling the shipment by the carrier himself, then, must have been greater under that system than under the present system?

Mr. Chase: Yes, sir, undoubtedly, because we perform all that service and it goes through in straight carload lots. The Florida Citrus Exchange has also come into existence since 1908 when the original case was heard, and they have taken over and handle a large volume of the business, 25 per cent, on a co-operative basis for the growers, and that all moves in solid car load lots, and they discountenance less than carload shipments on account of the slow time of rehandling and decay, and the usually unsatisfactory condition at destination. And that applies also to vegetables and also to pineapples. Anything that is brought up to Jacksonville—very often we have to assemble assorted cars here of grape fruit and oranges and pineapple which grow in different districts, and when we do that we have to pay naturally the local to base point plus the Jacksonville proper rate which you put into effect several years ago, so that applies
1780 not only to citrus fruits but also to vegetables.

Commissioner Prouty: I can see how it would be applied.

Mr. Chase: Now the minimum into the west on vegetables almost uniformly is 480 crates or 24,000 pounds, and while your order calls for 420 crates under ventilation or 21,000 pounds, that is not generally used, because we load the cars as a rule 480 crates, and sometimes in excess of that number of crates.

Commissioner Prouty: Is that true as to the eastern market?

Mr. Chase: It is true to the eastern markets and to the west, but it is more true to the west than to the east because as a rule their minimums are higher in western territory than in eastern territory.

Commissioner Prouty: Is there anything further Mr. Massey?

Mr. Massey: No.

Mr. Moore: Of course you recognize you have carload rates now from points of production on citrus fruit and vegetables to destination points. What you are looking to get is lower carload rates as I understand it, is that correct?

Mr. Chase: As I understand it we have a carload rate and carload minimum from base points only with the exception of products under refrigeration.

1781 Commissioner Prouty: Under this new tariff you have the carload rate from point of production to destination.

Mr. Chase: Under the tariff they have just put into effect, yes, sir.

Commissioner Prouty: Let me ask you, Mr. Moore, because this is the thought in my own mind, if in point of fact this product does move up to the base point now in carload lots, and it must, ought not the through charge to be somewhat less than as though it moved in

fact at any quantity rate and was consolidated by the carrier at this point.

Mr. Moore: I inquired about that from these gentlemen before we began the hearing, and understood them to reply that they have to maintain a less than carload service themselves.

Commissioner Prouty: They may have to maintain a less than carload service, but insofar as this product moves at the carload rate, it moves from the point of origin, and the result has been that the average loading of oranges up to base point has risen from 215 to 275 boxes. Now we are told time after time that just in proportion as you can increase the loading of cars you decrease the expense of handling the traffic.

Mr. Moore: What do you say to that, Mr. Capps?

1782 Mr. Capps: We did not fix the carload proportional rate with any idea of consolidation at Jacksonville. We fixed the rate to Jacksonville proper, which was to take care of the business going to Jacksonville and reshipped.

Commissioner Prouty: I understand, but it had not occurred to me and I do not think the commission considered it in fixing the rate, that in point of fact the car load rate from Jacksonville could not be availed of unless the shipment moved as a carload up to Jacksonville. That is to say the car load must move as a car load all the way, so that the effect of our order was to compel the shipper to make up a carload at the point of origin, and the result of that is to diminish the cost to you of moving the traffic from the point of origin up to the base point.

Mr. Capps: I think that was all brought out very clearly here. But for that there would have been no case for two rates from Jacksonville. We fixed a carload rate from Jacksonville proper and from Jacksonville as the base point, the base point being understood it was to be used with an any quantity rate up to Jacksonville from the producing point. We never had any understanding then:

1783 if that was not the case I can not see why we should fix two rates properly.

Commissioner Prouty: I can see that must have been the effect of it, but I think what we had in mind was that the traffic might move up to Jacksonville at the any quantity rate, and at carload rates from Jacksonville on. It appears in point of fact that the carload rate must of necessity relate back to the point of origin because it is either a carload all the way or not a carload at all.

Mr. Capps: Yes. We never had any extent of it.

Commissioner Prouty: Then the practical effect of our order has been the decrease to you in the cost of moving this traffic up to Jacksonville and if it has actually decreased the cost of moving the traffic up to Jacksonville, why should not the carload rate be correspondingly reduced from the point of origin to Jacksonville.

Mr. Capps: I doubt if it has decreased it. We showed that 90 per cent moved by carload through, and there is only a small per cent that you get less than carload.

Commissioner Prouty: Mr. Massey showed the average number of crates moved up to the base point was 215, and it has increased to

date to 275, and if you use these refrigerator cars it will speedily increase to over 300, because you can insist and should insist
1784 on loading over 300 boxes in those cars. You must recognize these facts, that it is to your interest to somewhat reduce the rate if you can by that means stimulate carload movement. When there is a carload movement that is loaded by the grower and he prepares the car, strips the car and under the any quantity movement you had a conductor stand on the platform and put it in the car, as I understand.

Mr. Capps: No.

Commissioner Prouty: So that the cost of actually moving that traffic up to Jacksonville to you has been reduced?

Mr. Capps: No, our business is loaded about the same way as when we had the any quantity rate. So far as the loading is concerned, the loading and stripping is done by the refrigerator car company, or the company is paid for the service. In the case of ventilator traffic our business is loaded the same as it was before these rates were put in. We have a great number of receiving points at which there are no agents, and no loading forces, and we put the cars into the packing house, and the packer loads today the same as he did when he had an any quantity rate through.

Mr. Menzies: I do not think there is any question about
1785 the fact that as the load increases the cost of transportation is reduced a certain extent, but all these things were considered at the last hearing, and at the previous hearing. We were informed then that if reductions were made north of Jacksonville that business would move through from the initial point in carload quantities.

Commissioner Prouty: Who informed you of that?

Mr. Menzies: The testimony shows on the part of shippers and I think the Commission itself, if you please, said something in regard to it, but naturally that was the case, whether it was referred to at that hearing that the reduction in carload rating from Jacksonville increased the movement in carloads from initial points. But let us not forget the point that these same initial lines in Florida participate in the reduction north of Jacksonville. We have already borne our part of that reduction.

Commissioner Prouty: You have already born- your part of that reduction from Jacksonville north, but you have not borne your part of the reduction up to Jacksonville. Here we would compel Mr. Beckwith to reduce his rate, when he gets a carload rate, although that produces no effect on that rate north of Jacksonville.

1786 Mr. Menzies: Here is another point I would like to make. We are asked to reduce the rate as to the base points now, the rates that were satisfactory to the Commission five or six years ago, or even at a time when the crop was larger than it is today. We have abundant evidence to that effect. Now why is the demand made at this time on a smaller crop for a lower rate than was made in 1894 or 1895 with a larger crop? The Florida Railroad Commission approved these rates when we handled *the* larger business than we are now doing. We have been told time and time again by shippers next year we will have ten million or fifteen million boxes,

exaggerated figures. We have never got much beyond 6,000,000 yet, and we had that much in 1894 and 1895 or thereabouts.

Mr. Moore: How much is the crop going to be off this year from what it was last year?

Mr. Chase: I do not know. I think it will run between four and five million boxes.

Mr. Moore: How much will it be off in quantity from last year?

Mr. Chase: If it runs 5,000,000, it will be 1,000,000 boxes shy of last year. Commissioner Prouty, the crop of 1894-5, as Mr. Menzies says, of 6,000,000, was never shipped. The largest
1787 crop we ever shipped prior to the freeze was the crop of 1893-4, which amounted to 5,500,000 boxes. We figured we had a 6,000,000 box crop for the season of 1894-5, but the freeze occurred on December 28th, and there was a large percentage of that crop which was never shipped. I do not think we shipped more than 3,000,000 boxes, so that the crop shipped last year is the largest crop that Florida has ever marketed. You know Florida's misfortune was California's opportunity, and they made good use of that opportunity, and they have had this year about 50,000 carloads, which is about 20,000,000 boxes, and when the freeze of 1894-5 occurred, we did not regard California competition at all, because they did not have the navel orange to any great extent, and they did not conflict with Florida oranges. The success of California is their freight rate. They have a blanket rate and they can come into our territory and rob us of our market and Florida cannot go into their market, and the transportation companies down here won't help us out any. If they would come in and co-operate with the growers and the shippers, and help us develop markets for
our increased production, it would be a great deal better than
1788 taking up your time with these hearings. They are disagreeable to us, and it would be a great deal better if we could meet on some kind of common ground and we get their views and they get our views, and they can put in rates not only on citrus fruits but on vegetables.

Commissioner Prouty: They have almost as much trouble with their rates out in California as you do down here. I have to go out there almost as often as I come down here.

Mr. Chase: That is true, they always want the most out there, but we would like to swap rates with them.

Commissioner Prouty: No, you would not either; your rates are lower to points of consumption than theirs.

Mr. Chase: And our distance is one third, and we are entitled to it, but the per ton per mile is where you make the comparison, and look at the receipts they are getting and the haul they are getting on it.

Commissioner Prouty: Is there anything more?

Mr. Menzies: The saving that accrues to us by reason of the increase in the loading, I mean the increased average loading, is far more than offset by this tremendous increase in the number of refrigerator cars that we have to furnish and that we have to move south empty.

Mr. Moore: These gentlemen have said there was some
1789 issue in respect to the division of rates to Central Freight Association points, and they want to know whether that matter would be taken up or not.

Commissioner Prouty: I do not think there is any issue of that kind which can be taken up here. I infer from an inspection of the tariff that the suggestion of the commission as to rates which should be made to many points in Central Freight Association territory has not been complied with, but I understand that the lines south of the Ohio River are receiving as their division of the rate the amount which I suggested, and the other carriers admit it would be fair, which was 41 cents to the Ohio river.

Mr. Capps: The lines north of the river have not suggested the rate suggested, on the basis of 41 cents.

Commissioner Prouty: I suggested to Mr. Drayton when he called my attention to the matter that he file a supplemental petition stating the point to which he asked to have rates established, and asking the commission to establish those rates. We have already said we thought they ought to be established, and unless the carriers show some reason to the contrary we shall establish them. And unless they show some reason to the contrary we will abide by that.
1790 As I suggested at that time, the suggestion having been accepted by them.

Mr. Capps: You fixed rates to certain points such as Chicago. In view of the subsequent hearing in Washington on the question of divisions, can you not issue an order covering the divisions of the Chicago rate and other rates that the Commission actually fixed?

Commissioner Prouty: Yes.

Mr. Capps: That is what we want.

Commissioner Prouty: I understood you gentlemen had agreed about it.

Mr. Capps: We thought so too, but we find we have not.

Commissioner Prouty: Just write me a letter and state that no agreement has been reached and I will call their attention to it and we will have the thing settled.

Mr. Brand: The lines south of the river have published rates on the basis of the division suggested by you.

Commissioner Prouty: You have published the divisions to the points we named?

Mr. Brand: We have published the divisions to the specific points, and then we have published rates to related points up to the river based on 41 cents up to the river.

Commissioner Prouty: I have suggested that Mr. Drayton
1791 file a petition with the Commission asking us to establish those rates, and unless some reason is shown we will establish those rates. Now if they have not accepted our suggestion as to the division and you will write a letter to me I will call their attention to it. The question has already been heard.

Mr. Capps: I understand there is a petition before the Commission now to fix the division.

Commissioner Prouty: Yes, and there has been a hearing and

I made the suggestion that it be divided on the basis of allowing you 41 cents, and they accepted the suggestion as I understood. Now you say it has not been accepted?

Mr. Capps: They deny it now.

Mr. Boggs: In the actual working out of these rates I was present at that conference in Washington last fall when the matter was discussed about the lining up and the actual rates, for instance the rate to Omaha, which was fixed by the commission, is 9 cents lower than the rate to Council Bluffs immediately across the river, and on this side. I understand you think we had better file a petition to cover that point.

Commissioner Prouty: I think so.

Mr. Boggs: Would it be necessary to take testimony?

1792 Commissioner Prouty: So far as Omaha and Council Bluffs that may not be necessary, because the fourth section may take care of that, but when you get up to Sioux City it would be necessary.

Mr. Boggs: Under a petition of that sort would it be necessary to take testimony.

Commissioner Prouty: I do not think any further testimony is necessary. Of course that may not be so, because the lines north of the Ohio River may have some objection.

Mr. Boggs: The burden would be upon them then.

Commissioner Prouty: Yes, but I think they ought to go forward and reach some conclusion. It does not seem necessary for you to be there. I told Mr. Drayton if he would file his petition we would call upon them to answer and see what they had to say, and if after hearing that showing it seemed necessary to hear from you we would notify you.

Mr. Boggs: There is another point, and it is in regard to the application of these rates over the East Coast road for a shipment for consolidation at Jacksonville or South Jacksonville. The rate was fixed by the commission, which we understood to apply to those shipments.

1793 That is, that they should take a less than carload interstate rate from point of origin to South Jacksonville, and be there consolidated and go on at an additional charge of three cents and then go on at the interstate carload rate to point of destination. The Florida East Coast road refuses to apply the interstate rate on those shipments sent up here for consolidation. It applies the intrastate rate from point of origin plus 3 cents consolidation charge, plus the interstate rate from there on. It does not seem to us that would require a new complaint or decision of the Commission. It seems to us that has been decided, it is a matter of law that that is under your jurisdiction when it is actually part of the through movement, and it remains only for the carrier to put in effect the order as you have made it.

Commissioner Prouty: What is your view about that, Mr. Beckwith?

Mr. Beckwith: If we find that it is consigned to Jacksonville locally, we apply the Jacksonville local rate on it. If it is consigned through we apply the proportional rate ordered by the commission.

That is what Mr. Boggs — I understand—he says it is t
of these men when they send the shipment up, to reforwa
he wants the proportional rate ordered by the Commissio
on this instead of the local rate.

1794 Commissioner Prouty: Well, Mr. Boggs, there ou
something connected with the shipment to indicate
for beyond Jacksonville, and if not to be consolidated at
ville, otherwise part of it might be consolidated and part of
be left here.

Mr. Boggs: The association has asked for further inform
the matter, and we have advised them that it should be tak
conference with the carriers to agree on some form of de
and I wrote to Mr. Kirtland but I never got any reply f
about a month ago, and we suggested to our growers that t
thing would be to mark those for consolidation at South
ville in interstate movement and let that appear on the bill
Mr. Beckwith: If it is shipped to South Jacksonville t
Jacksonville local rate applies also. I do not see how it wou
sible for us to handle business under those conditions and t
it without the intent to reforward it being expressed. They
reforward it, they may make the delivery right there.
open the gates to almost any shipment moving where the
desire to get the proportional rate instead of the proper rate

shipments.

1795 Mr. Boggs: That consolidation is done by your
pany, those carloads are consolidated right there
Jacksonville. It was testified in the last case that the labor
nished and it was done by your company.

Mr. Beckwith: Yes, we handle it for the pineapple peo
Commissioner Prouty: When those shipments start do y
the final consignee?

Mr. Boggs: No, they are consolidated here by an agen
most part. In the pineapple movement Mr. Porshay has be
ling most of it, and they are sent to him and this consoli
handled by the carriers and they take the local shipmen
them in carloads and absolutely control the question as to
those cars shall be permitted to stop here on that interstat
shall go on. It is absolutely within their control because
the car and are allowed by the Commission three cents diff
citrus fruit and pineapples and 2 cents on vegetables where
form that service. That is absolutely within their control
can protect themselves against any abuse of that rate by th

Mr. Beckwith: That is true, the proper rate out

1796 sonville is that differential higher, but we say it is n
shipments are consolidated at South Jacksonville
course our local tariff would apply to Jacksonville for deli
it would make the cost to the shipper a great deal more tha
under the present conditions.

Mr. Boggs: Can that consolidated service be performed h
Mr. Beckwith: We would have to dray it.
Commissioner Prouty: Don't you make deliveries here in
ville?

Mr. Beckwith: No, we make deliveries in Jacksonville, but it is on transfer from South Jacksonville. All through business is handled at South Jacksonville.

Commissioner Prouty: Is that consolidation at South Jacksonville?

Mr. Beckwith: Yes.

Commissioner Prouty: Where do you connect with these other lines.

Mr. Beckwith: At Jacksonville.

Commissioner Prouty: How do you get from South Jacksonville over here.

Mr. Beckwith: Switching.

Commissioner Prouty: Who performs the switching?

1797 Mr. Beckwith: We perform the switching.

Commissioner Prouty: If a shipment was consolidated like that you would get three cents for consolidation?

Mr. Beckwith: At that point?

Commissioner Prouty: At that point.

Mr. Beckwith: Not if the three cents was allowed in the rate north of Jacksonville, we would not.

Commissioner Prouty: Is there any difference between South Jacksonville rate and the Jacksonville rate?

Mr. Beckwith: We make the same rate as to South Jacksonville as to Jacksonville locally.

Commissioner Prouty: I should suppose those shipments ought to be consolidated at South Jacksonville and that you ought to get the fee for the consolidation. What would be the objection to that.

Mr. Beckwith: Well, I would rather not go into that business at all, not even for the three cents.

Commissioner Prouty: Don't you consolidate there now?

Mr. Beckwith: For connecting lines we do, but to attempt to handle it for forwarding agents, we have not the room.

Commissioner Prouty: Where is that business done now? It appears it is done now somewhere.

1798 Mr. Beckwith: There is very little of it done now. During the pineapple season last year the only one that did it was Mr. Porshay at South Jacksonville, and it did not amount to a great deal.

Mr. Boggs: There is a very large proportion of the traffic which could be advantageously handled in that way and especially on the thin edges of the season, when it is difficult to make a solid car load, there is a great deal which could be done and the growers consider it a point of great importance. The situation with us is if we undertake to regulate that thing by an application to the State Railroad Commission, we are at once confronted with the defence by the carriers that this is interstate movement and the State Commission has no jurisdiction, and legally they are correct, there is no question about that, it is under the jurisdiction of the Interstate Commerce Commission, and I can read no other meaning into that order and report of the Interstate Commerce Commission.

Commissioner Prouty: We have established a rate to Jacksonville

for the movement beyond over the Florida East Coast. Now in case of that traffic where does the Florida East Coast Railway deliver?

1799 Mr. Beckwith: They would have to perform the service of consolidation at South Jacksonville and deliver it to Jacksonville.

Commissioner Prouty: It would rather seem to me under those circumstances your company ought to perform the consolidation and receive the compensation for it. If you have not facilities there you ought not of course to be required to do it. Does not three cents a box pay you for doing that business?

Mr. Beckwith: I judge three cents would pay us, yes, sir, if they would allow us three cents. I will attempt*ed* to do what I can to the extent of our facilities.

Mr. Boggs: That is all we have asked, that they apply the intrastate rate plus three cents for that consolidated movement. The intrastate less than carload rate up to here and then add three cents and then add the interstate carload rate beyond.

Commissioner Prouty: We may be obliged to revise our Pineapple order a little bit in trying to bring these rates into line, I do not know. Now I wish you gentlemen would all file with the Commission a brief stating exactly what your claims are

1800 about these rates and exactly why.

The complainants should file such a brief within fifteen days. Can you Mr. Boggs?

Mr. Boggs: Yes.

Commissioner Prouty: And the defendants should file a statement of their side of the case within fifteen days more.

Mr. Moore: We have got to furnish a good deal of information.

Com'r Prouty: Can you not do it within a month?

(After further conference the Commissioner directed that the complainants have until April 1st in which to file their brief, and the defendant until April 25th in which to file reply briefs.)

Whereupon at six P. M. the case was closed.

1801 *Notice of Motion of United States to Strike.*

Filed June 3, 1912.

In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, a Corporation, Petitioner,

v.

UNITED STATES et al.

GENTLEMEN: Please take notice that at the hearing of this cause a motion will be made by the United States to strike out as incompetent, irrelevant and immaterial all the evidence which did not form

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a part of the proceedings and testimony before the Interstate Commerce Commission.

Very respectfully,

WINFRED T. DENISON,
Assistant Attorney-General.

True copies of the above notice served upon and accepted by all the parties in interest, viz:

ALEX. ST. CLAIR-ABRAMS,
FRED'K C. BRYAN,
Solicitors for Florida East Coast Railway Company.

A. A. BOGGS,
Solicitor for Florida Fruit & Vegetable Shippers Association and East Coast Fruit & Vegetable Growers' Association.

F. M. HUDSON,
Solicitor for Railroad Commission of Florida.

CHARLES W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

June 3, 1912.

1802 In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY CO.
v.
THE UNITED STATES.

Order of Intervention.

Entered June 26, 1912.

The Railroad Commissioners of Florida having filed and presented their petition for intervention herein and it appearing to the Court from the said petition that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered, That the Railroad Commissioners of Florida be and they are hereby allowed to intervene and become parties intervener and to be heard by their counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said interveners to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said interveners and their course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

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1803 *Order as to Answers of United States and Interstate Commerce Commission.*

Entered June 26, 1912.

In the United States Commerce Court, June Session, 1912.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
v.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Florida Fruit and Vegetable Shippers' Protective Association, Intervening Respondents.

Order.

On motion of the respective counsel for the United States and the Interstate Commerce Commission in open court made, all the parties being represented,—

It is ordered, That the answers of the United States and the Interstate Commerce Commission filed in the above-entitled cause be and the same are hereby also made to stand as the answers of the United States and the Interstate Commerce Commission to the amendments to the petition filed January 31, 1912, and allowed February 6, 1912.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

1804 *Journal Entry.*

Proceedings of June 26, 1912.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, et al., Interveners.

In this cause counsel for the United States moved to strike out all evidence other than that introduced before the Interstate Commerce Commission. The Court reserved its decision on said motion until final disposition of the case. Thereupon said cause came on for final hearing upon the merits and the arguments of counsel were concluded, Mr. Frederick C. Bryan and Mr. Alex. St. Clair-Abrams appearing on behalf of the petitioner, Mr. Blackburn Esterline on behalf of the United States, Mr. Charles W. Needham on behalf of the Interstate Commerce Commission, Mr. A. A. Boggs on behalf of the Florida Fruit & Vegetable Shippers' Protective Association et al., and Mr. F. M. Hudson on behalf of the Railroad Commissioners of Florida. Counsel for the Intervening Shippers was granted leave to file a list of authorities. Thereupon the cause was taken under advisement by the Court.

United States Commerce Court.

No. 58.—June Session, 1912.

Florida East Coast Railway Company, petitioner,

v.

United States, respondent; Interstate Commerce Commission, Railroad Commissioners of Florida, Florida Fruit & Vegetable Shippers' Protective Association et al., interveners.

ON MOTION TO STRIKE OUT EVIDENCE AND ON FINAL HEARING.

(For opinion of Interstate Commerce Commission, see 22 I. C. C. Rep., 11.)

Mr. Winfred T. Denison, Assistant Attorney General, with whom *Mr. Thurlow M. Gordon*, special assistant to the Attorney General, was on the brief, in support of the motion to strike out evidence.

Mr. Alexander St. Clair-Abrams and *Mr. Fred C. Bryan*, for the petitioners.

Mr. Blackburn Esterline, special assistant to the Attorney General, with whom *Mr. Winfred T. Denison*, Assistant Attorney General, was on the brief, for the United States.

65573—12—1

Mr. Charles W. Needham for the Interstate Commerce Commission.

Mr. F. M. Hudson for the Railroad Commissioners of Florida.

Mr. A. A. Boggs for the Intervening shippers.

Before KNAPP, Presiding Judge, and HUNT, CARLAND, and MACK, Judges.

(November 13, 1912.)

MACK, Judge:

This suit was brought to set aside an order of the Interstate Commerce Commission, entered November 6th, 1911, in two cases heard and considered together, Commission's Nos. 1168 and 3808, in so far as the Florida East Coast Railway Company is thereby affected. The other railroad companies have complied with the order of the Commission.

The original complaint in case No. 1168, filed in 1907, involved the rates upon fruits and vegetables from producing points in Florida to consuming markets in all parts of the United States east of the Rocky Mountains. Those rates were considered at the first hearing under two divisions, viz: (1) A gathering charge from the points of origin in Florida to what were known as Florida base points, of which Jacksonville was the principal one, when destined to interstate points; and (2) rates from such base points to points of final destination in other States. The sum of the two rates constituted the through charge.

On June 25, 1908 (14 I. C. C. Rep., 476), the Commission held that at that time the rates on

citrus fruits and pineapples from the base points to certain points of destination named in the order were unreasonable, and fixed reasonable rates, establishing carload and less-than-carload all-rail rates to eastern points, to which theretofore only any-quantity rates had prevailed, reducing the rates for carload shipments much below the any-quantity rates, and making the less-than-carload rates ten cents per crate higher than the carload, with the proviso that they should not, however, exceed to any point the then any-quantity rate to such point. The Commission declined to order in carload and less-than-carload rates on vegetables to these points, although it suggested to the railroads that they consider the advisability of doing so.

It refused to condemn as unreasonable the any-quantity gathering rates from points of production to the base points. In justification of this refusal the Commission said:

"From an examination of the elaborate figures which were introduced upon the trial showing the character of the traffic handled by these Florida roads, the conditions under which it is handled, their earnings, and the cost of operation running through a series of years, it is difficult to see how these railroads can be expected to transport in a suitable way this fruit and vegetable traffic from points of production to these basing points for a less sum than they now receive. It is difficult to see how, even upon the present tariff, those lines can in the immediate future expect to pay any considerable return upon their investment. We

feel that these local rates, although they are high in comparison with other local rates, are as low as should be established under all the circumstances."

The carriers complied with the order of the Commission, in so far as definite rates were fixed, but did not accept the suggestions which were made in the report.

Subsequently a complaint was filed with the Commission to obtain the benefit of the suggestions of the Commission in the former case and to secure the establishment of rates on fruits and vegetables from Florida base points to those portions of the United States not embraced in the previous order. As No. 1168 had been retained for further proceedings, and as shippers on the Florida East Coast Line complained of the rates on pineapples, citrus fruits, and vegetables, this case was again set down for hearing with No. 2566, and it was stated by the Commission that the previous record in No. 1168 should be treated as a part of the record in No. 2566.

The order in No. 2566 affected and changed the rates on citrus fruits, pineapples, and vegetables, including carload and less-than-carload rates, from Jacksonville, Florida, and other Florida base points to points particularly named in other States.

The order against the Florida East Coast Railway, in No. 1168, entered February 8, 1910 (17 I. C. C. Rep., 552), found the existing any-quantity rates on pineapples unreasonable from points on the Florida East Coast Railway to Jacksonville, Florida, when applied to interstate traffic, and fixed

certain maximum rates for the transportation of pineapples in carload and less-than-carload quantities. In support of this order the Commission said in its report:

"The growers of pineapples suggest that we might properly establish a lower rate on pineapples than upon oranges. All the incidents of the transportation are the same; the value of the two commodities is practically the same. The only reason put forward for a lower rate upon pineapples is that the condition of the industry demands it; but testimony already taken in this case shows that in the past the condition of the orange industry in Florida has been and now is critical, and if we were to adopt the theory urged upon us by the growers of pineapples it is almost certain that we should be met by the same argument, with equal force, in case of other citrus fruits and vegetables in Florida and elsewhere. We repeat that the freight rate can not be established upon that basis.

* * * * *

"The evidence produced upon the present hearing suggests no change in what was said (in the former report) so far as that applies to the Florida East Coast Railway. * * *

"While, however, we adhere to what was said in the previous case, we do think, upon more careful examination, that these rates of the Florida East Coast Railway on pineapples ought to be somewhat revised. They are not consistent with one another, and in our opinion those from the more distant points are too high as compared with rates from nearby points.

"The present rates are in any quantity. About 60 per cent of these pineapples move from the point of origin in carloads, 40 per cent in less than carloads. Carload shipments are stripped and loaded by the shipper and are not unloaded at Jacksonville, which probably saves the carrier not far from 2 cents per box. The less-than-carload shipment is loaded by the railway and usually unloaded at the station in South Jacksonville or Jacksonville. In our opinion carload rates should be established which are less than the present any-quantity rates by 3 cents per box.

"The establishment of such carload rates will not of a certainty work a decrease in the net earnings of the carriers. It is a false theory of transportation which seeks to force the shipper to avail himself of a less-than-carload service, which is more expensive to render, for the purpose of increasing the gross revenues of the carrier. The true object should be to perform the service in the most economical manner and to charge for that service reasonable compensation. In the end this makes to the advantage of both the carrier and its patron. The vice president of the Florida East Coast Railway stated that he had always thought that carload rates should be established and that, in his opinion to establish carload rates 3 cents per box less than the present any-quantity rates would not prejudice the net revenues of his company, since he would make up by saving in operating expenses what he lost in gross income."

The orders of February 8, 1910, were complied with. Thereafter and effective July 15, 1910, the Florida East Coast Railway Company voluntarily

established in place of its any-quantity rates carload and less-than-carload rates on citrus fruits and vegetables from points of production to Jacksonville. The carload rates were, from most points, less than the former any-quantity rates; the less-than-carload rates were higher than the former any-quantity rates from points 230 miles or less south of Jacksonville and lower from points farther south, but both the carload and less-than-carload rates so established were considerably higher than the pineapple rates established under the order of February 8, 1910. While the new rates were approved by the Railroad Commission of Florida for intrastate traffic, they were considered by it to be too high as proportional rates on interstate traffic. Pursuant, therefore, to a Florida statute, the State commission, having on January 28, 1911, complained in case No. 3808 against the other railroads, intervened in case No. 1168.

At the hearing on these complaints each party complainant and defendant in cases Nos. 1168 and 3808 was present, testimony was taken and on November 6, 1911, the order now complained of was made. (22 I. C. C. Rep., 11.) This order deals exclusively with the rates on pineapples, citrus fruits, and vegetables from points on the railroads within the State of Florida to Jacksonville, Fla., when destined for points beyond in other States. It finds the existing rates unjust and unreasonable to the extent that they exceed the

maximum rates prescribed by the Commission in its order and prescribes distance rates upon carload and less-than-carload quantities of pineapples, citrus fruits, and vegetables, together with a minimum carload to be applied to each kind of traffic named, the rates so fixed to be maintained for a period of not less than two years from January 2, 1912.

By this order a slight increase was made in the pineapple rate from some points more than 320 miles south of Jacksonville; the rates per crate for citrus fruits, in both carload and less-than-carload lots, were reduced to the pineapple rates, and the rate for vegetables, which in crates weigh 62½ per cent of citrus fruits, was fixed at 70 per cent of the citrus-fruit rate. In the report on which this order was based the Commission says:

"The original case was heard in the spring of 1908 and was disposed of upon the basis of conditions then existing. This Commission states in its report that the rates in force had been approved by the Florida commission, and that circumstance may have somewhat influenced us in our approval of the gathering schedules at that time; * * * we concluded that while these gathering rates were higher than would perhaps be reasonable upon railroads where the volume of business was greater and the net financial result more favorable, still they could not be deemed excessive in view of the circumstances under which the service was rendered.

"This conclusion was reached less than three years ago. No material change has taken place

since then so far as this record discloses which would lead to a different conclusion if the same subject were before us to-day. * * * There is nothing in this record which would call for a reconsideration of our former conclusion if exactly the same question were now before us.

"There is, however, a material difference in one respect between now and then. When we decided the original case, rates up to the gathering point were in all cases any quantity and in most instances this was also true from the base point to destination.

* * * * *

"There are * * * in effect to-day by the order of this Commission carload rates upon both fruits and vegetables from base points. * * * Since then that company (the Florida East Coast Railway Company) has filed carload and less-than-carload rates upon citrus fruits and vegetables, but these rates are higher than those named by us for pineapples.

"It appeared in the original case that citrus fruits to some extent, and vegetables to a much greater extent, were shipped in small lots to Jacksonville and there reloaded for movement beyond. It was our impression in establishing carload rates from the base point that this would permit the movement in small lots up to the base point and the consolidation at such point, and that the carload movement would in fact be mainly beyond the base point. Such has not been the result. In order to obtain the carload rate beyond the base point it seems to be necessary for the shipper, in actual practice, to present a full carload at the point of origin, and from this it follows that the movement up to the

base point at the present time is entirely different from what it was when we approved these any-quantity rates. At that time the loading was by the carrier; now it is mainly by the shipper. The loading of the cars from the point of origin to the base points is much heavier now than formerly. * * * The number of cars now required to transport the same amount of this traffic from points of origin to base points would be materially less than in 1908. Otherwise stated, it costs the shipper more to handle his business to-day and it costs the railroad less.

* * * * *

"It is earnestly contended in behalf of the Florida East Coast Railway Company that to apply these rates to that line would be confiscatory, and considerable testimony has been introduced and much discussion had upon both sides touching the financial condition of that company.

* * * * *

"The financial condition of the Florida East Coast Railway has been referred to at considerable length in our previous opinions in No. 1168, and it would not be profitable to discuss that subject further here.

"Taking that into account together with all the other facts and circumstances bearing upon the matter we are of the opinion that the rates suggested for the Seaboard Air Line and the Atlantic Coast Line in the State of Florida would be just and reasonable to apply upon the railroad of the Florida East Coast Railway Company. Those rates are already in effect upon pineapples and do not involve any extraordinary reductions from the rates on vegetables and citrus fruits which that company has voluntarily established."

Petitioner seeks to set aside the order of the Commission on the following grounds:

First. That there was no evidence to support the conclusion that the rates voluntarily made by the company were unreasonable and therefore the Commission had no power to proceed further and to fix what it might deem reasonable rates.

Second. That the rates are confiscatory.

First. It can not be denied that the Commission, both at the last hearing and at the earlier hearing in the same case, had a great mass of evidence before it touching the many questions of cost and value of the properties, cost and value of the services rendered, the history of the road and of the development of the industries involved, the methods of transportation and numerous other matters relevant to the determination of the unreasonableness of existing rates and the fixing of reasonable rates for the future. It is unnecessary to detail the testimony. Clearly, there can be found therein substantial support for the conclusions reached even though the Commission, if it had given weight to other parts thereof, might have reached a different conclusion. This court, however, is not authorized to review the Commission's determination of disputed questions of fact, made after a full and fair hearing, on proper notice, unless its power has been exercised in an arbitrary or unreasonable manner or in violation of petitioner's constitutional rights.

If the opinion of the Commission that present rates are unreasonable is based upon substantial, though conflicting evidence, the power can not be said to have been exercised in an unreasonable manner, even in a case wherein this court, if it had been charged with the duty of making the finding from the whole evidence, would have held the rates reasonable.

It is, however, urged that the report shows conclusively, in the passages above cited, that the Commission could not have deemed and did not deem the former rates unreasonable, because it expressly states that if the "same subject" or "exactly the same question" that was considered in the original proceeding were then before it, it would again refuse to hold the rates unreasonable, and it is urged that the "same subject" and "exactly the same question" were again before the Commission, viz, the reasonableness of the rates from the producing points to the base points.

To adopt this argument would be to give a much too literal interpretation to the quoted phrases, and would require us to disregard the entire context. A consideration of the whole report clearly shows that the Commission intended thereby to state that if the situation and conditions in 1911 were the same as in 1908 it would adhere to its former views. It thereupon proceeds, however, to indicate that the situation as to citrus fruits and vegetables had changed since 1908, exactly as it had indicated in

1910, the change in the pineapple situation since 1908, thereby demonstrating that the question before it was not "exactly the same," but materially different from that submitted to it in 1908. The orders of 1908 and 1910, establishing carload and less-than-carload rates from base points in place of any-quantity rates, changed the transportation methods not only from but to the base points; and as the Commission points out, they caused a great increase in the carload movement to base points, involving large savings to the railroad and increased expense to the shippers in the handling of the goods. Moreover, on full consideration, the any-quantity pineapple rates had been found to be unreasonably high when applied to the transportation after carload and less-than-carload rates were established, and from the evidence then taken together with that taken on the last hearing, the Commission found, as it well might, that there was no substantial difference in the transportation conditions between pineapples and citrus fruits. While the voluntary act of the railroad in reducing its rates July, 1910, would not of itself justify the Commission in reducing them still further and especially in making the less-than-carload rates lower than the former any-quantity rates, it was in effect an admission that the old any-quantity rates in force since 1902 would be unreasonable. Moreover, inasmuch as these new rates were put in after January 1, 1910, the burden was on the carrier

under section 15 of the act as amended June 18, 1910, to establish their reasonableness in so far as they exceeded the former rates.

If the change from any-quantity rates to carload and less-than-carload rates involved nothing more than a division of the existing business into two kinds, merely for bookkeeping purposes, a reduction not only of the carload but also of the less-than-carload rates might well be termed an arbitrary act. But, as the Commission points out, it involves much more than this. The effect of carload rates is ordinarily greatly to increase the carload business, both absolutely and relatively to the less than carload, to bring about heavier loading, to lighten the handling operations of the railroad, and thereby to reduce the operating expenses. The net revenues might remain the same so far as the mere effect of this change is concerned, for the reasons stated in the testimony of petitioner's vice president, as quoted above from the Commission's report on the pineapple rate. But even if the net revenues would be decreased about ten per cent, as petitioner contends, the Commission's action could not therefore be said to be unreasonable or arbitrary. And in this case it is to be noted that the railroad itself in its voluntary change had made many less-than-carload rates lower than the former any-quantity rates.

Considering the new rates, not in their effect on the general revenues of the company, but in relation to the cost of the service to the carrier, exclu-

sive of return on investment, the evidence is clear that they are not only greatly in excess of any out-of-pocket expense for this service, but that they give the carrier a considerable margin over the proportionate operating expense, as their contribution toward the return on the investment. In view of all the foregoing considerations, the Commission can not be charged with having exercised in an arbitrary or unreasonable manner its power of determining the reasonable rate, even if such a charge, presented in petitioner's argument and briefs, can fairly be said to have been made in the petition in this case.

Second. The basis for the contention that the order is confiscatory is the claim that the entire property has a present value in excess of the bonded indebtedness of $31,000,000 and the capital stock of $5,000,000; that the net revenues for the year ending June 30, 1911, were less than four per cent of this value; and that if the line, not from Homestead, but from Miami, north, be considered as the main line, the entire net revenues therefrom, after deducting that part thereof derived from passenger and freight traffic originating at or destined to points south of Miami, would yield but little over four per cent of its present value, whereas the legal rate of interest in Florida is eight per cent.

This claim is based on two assumptions: (*a*) that the main line ends at Miami and not at Homestead; (*b*) that the value of the company's entire property, including the so-called over-sea extension, and

not merely of the main line itself, must be considered in determining whether rates from points on the main line are confiscatory.

Without at this time considering under what circumstances, if any, the reduction of particular rates can be held to violate the constitutional rights of a carrier, because thereby the total revenues become inadequate, even though the particular reduced rates yield some contribution to the general net revenues over and above the pro rata cost of service, we are of the opinion that in the present case there can be no basis for a charge of confiscation, because neither of the assumptions above stated and upon which it is based is sound.

(*a*) Originally the road ended at Miami; later on, however, and before the act of 1905 in reference to the over-sea extension hereinafter referred to was adopted, it was extended to Homestead.

In its plant or construction account, the company itself, in its own bookkeeping, deals with the line from Miami to Homestead as part of the main line and not of the over-sea extension. The increased production in the territory between Miami and Homstead since 1908 demonstrates the wisdom of the construction of this branch as part of the main line, independently of the over-sea extension. We are clearly of the opinion that the main line must be considered as ending at Homestead. Without discussing the evidence in detail, we are further of the opinion that the net revenues on this main line are in excess of eight per cent on the present fair

value of the property, and not merely something over six per cent, as conceded by the petitioner.

No possible question of confiscation can arise under these circumstances, even if the effect of the order will be to reduce the gross, or even the net revenues, of the company for the next two years by the full amount of the difference in rates, amounting, as applied to the tonnage for the year ending June 30, 1911, to $131,000, and being about 3 per cent of the gross, and 10 per cent of the net operating revenue of the main line.

(*b*) Whatever the powers of the company may be under its amended charter, it was not until after the Legislature of Florida passed an act in May, 1905, entitled "An act to encourage and secure the construction of a line of railway from the mainland of Florida to Key West; to provide for a fair and equitable assessment of taxes of the corporation constructing it; and to grant right of way over the submerged and other lands belonging to the State, and over the waters of the State, and to authorize the filling of the submerged lands and to construct buildings, docks, and depots thereon," that the company, at a stockholders' meeting, decided to construct the over-sea extension.

The tremendous cost of the line from Homestead to Key West, over $175,000 a mile, the scarcity of population along the route, the natural impossibility of ever making much of the territory productive, either agriculturally or industrially, confirm

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the recital in the act of 1905 that the purpose of the extension was to share in the traffic expected to pass through the Panama Canal, unless, indeed, this marvel of engineering skill was constructed as a monument to the man, who from the early days to the present was and is the sole owner of the petitioner's stock and to whose indomitable energy and supreme confidence in the future prospects of this section of the country the road primarily owes its construction. At the present time the operating expenses of this extension are naturally in excess of its revenues. Its entire gross revenues—freight and passenger—for the year ending June 30, 1911, were less than $100,000. The contention that the earnings of the main line on passengers who traveled over the extension is to be attributed to the extension, can not be sustained. There is no evidence that would justify this court in holding that the extension produced any considerable increase of travel on the main line or that most of the passengers to Cuba via Key West would not have gone to or via Miami or Homestead if the extension had not been built.

To what extent shippers on an original or main line should bear increased burdens due to the construction of additional or branch lines must depend upon the particular circumstances of each case. No general rule can be formulated. In our opinion, the Commission was fully justified in disregarding the value of this extension, and this court, in determining whether or not the order of the Commission

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operates to confiscate petitioner's property, must likewise at this time and at this stage in the development of the business on the extension and on the main line, reach its conclusions irrespective of the value of the over-sea extension.

At the final hearing a motion was made on behalf of the United States to strike out all evidence which did not form a part of the proceedings and testimony before the Interstate Commerce Commission. In view, however, of the conclusions reached by us after a consideration of the entire evidence, it becomes unnecessary to pass upon this motion.

The preliminary injunction will therefore be vacated and the petition dismissed for want of equity, and it is so ordered.

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WASHINGTON : GOVERNMENT PRINTING OFFICE : 1912

1824 *Final Decree.*

Entered November 14, 1912.

United States Commerce Court, June Session, 1912.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Railroad Commissioners of Florida, Florida Fruit & Vegetable Shippers' Protective Association, et al., Interveners.

Order Vacating Injunction and Dismissing Cause.

This cause came on to be further heard at this Session, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

That the preliminary injunction heretofore granted in this cause be and it is hereby vacated, and that the petition be and it is hereby dismissed for want of equity, at the cost of the petitioner.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

1825 *Petition for Appeal.*

Filed November 13, 1912.

UNITED STATES OF AMERICA:

In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association, et al., Interveners.

Petition for Appeal from the United States Commerce Court to the Supreme Court of the United States.

The above named Petitioner, the Florida East Coast Railway Company, conceiving itself aggrieved by the order, judgment and decree made and entered on the 13th day of November, 1912, in the above entitled cause, does hereby appeal from said order, judgment and decree to the Supreme Court of the United States for the reasons specified in the Assignment of Errors which is filed herewith, and

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prays that the appeal may be allowed and that the original record, proceedings and papers upon which order, judgment and decree was made, duly authenticated, as provided for in Section 2 of the Act of June 18, 1910 creating the Commerce Court and defining its powers and jurisdiction, be transmitted on appeal to the Supreme Court of the United States.

Wherefore the Petitioner prays that said Order, judgment and decree may be reversed and that said court may be directed to enter an order, judgment and decree in accordance with the prayer of the Bill.

FREDERICK C. BRYAN,
Of Counsel for Petitioner.

ALEX. ST. CLAIR-ABRAMS,
Solicitor.

Dated the 15th day of November, 1912.

1826 *Assignment of Errors.*

Filed November 15, 1912.

UNITED STATES OF AMERICA:

In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association, et al., Interveners.

Assignment of Errors.

The Petitioner, the Florida East Coast Railway Company, prays on appeal from the final order, judgment and decree of this Court to the Supreme Court of the United States, and assigns for error the following:

First. The Court erred in holding that the Interstate Commerce Commission had the power to make and fix the rates complained of.

Second. The Court erred in holding that said rates were not confiscatory.

Third. The Court erred in holding that the main line of the Petitioner's railroad ends at Homestead and that the net revenues on this alleged main line are in excess of eight per cent on the present fair value of the property.

Fourth. The Court erred in holding it was not until May 1905 that the Petitioner decided to construct its extension to Key West.

Fifth. The Court erred in holding that the Interstate Commerce

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Commission was justified in disregarding the value of this extension in fixing the rates complained of.

Sixth. The Court erred in deciding that there was evidence before the Interstate Commerce Commission that the conditions existing in 1911 were any different from those existing in 1908 to warrant a further reduction of rates.

Seventh. The Court erred in deciding that there was no evidence to justify it in holding that the extension produced any considerable increase of travel on the main line from Jacksonville to Homestead.

Eighth. The Court erred in deciding that the Interstate Commerce Commission had any evidence before it in 1911 to show any material increase in carload shipments or any material saving to the Appellant (Petitioner) as a result of the reduced rates on carload shipments from points of origin.

Ninth. The Court erred in deciding that the rates fixed by the Petitioner put any increased burdens on the shippers on the line from Jacksonville to Homestead.

1827 Tenth. The Court erred in vacating the preliminary injunction and dismissing the petition.

Eleventh. The Court erred in not granting the relief prayed for in the petition.

Wherefore the Petitioner prays that said order, judgment and decree may be reversed and that said court may be directed to enter an order, judgment and decree in accordance with the prayer of the petition.

(Signed) FREDERICK C. BRYAN,
Of Counsel for Petitioner.

ALEX. ST. CLAIR-ABRAMS,
Solicitor.

1828 *Order Allowing Appeal.*

Entered Nov. 15, 1912.

In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Railroad Commissioners of Florida, Florida Fruit & Vegetable Shippers' Protective Association, et al., Interveners.

Order Allowing Appeal.

In this cause the above named petitioner by its solicitors having made its application in writing for an appeal from the decree therein rendered on the 14th day of November, 1912, to the Supreme Court of the United States, it is therefore ordered that said appeal be and

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the same is therefore allowed and made returnable on the 16th day of December 1912.

MARTIN A. KNAPP,
Presiding Judge.

November 15, 1912.

1829 *Appeal Bond.*

Filed November 21, 1912.

UNITED STATES OF AMERICA:

In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association, et al., Interveners.

Bond on Appeal from the United States Commerce Court to the Supreme Court of the United States.

Know all Men by These Presents: That the Florida East Coast Railway Company, a corporation, as principal, and A. V. S. Smith and F. O. Williams, of Jacksonville, Florida, as sureties, are held and firmly bound unto the United States, The Interstate Commerce Commission, the Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association and East Coast Fruit and Vegetable Growers' Association in the full and just sum of Five Hundred ($500) dollars to be paid to the said United States, the Interstate Commerce Commission, the Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association and East Coast Fruit and Vegetable Growers' Association, their successors or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents. Sealed with our seals and dated this 19th day of November, 1912.

Whereas, on the 14th day of November, 1912, in the United States Commerce Court in a suit pending in said Court between the Florida East Coast Railway Company, Petitioner, and the United States, Respondent, and Interstate Commerce Commission, Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association and East Coast Fruit and Vegetable Growers' Association, Interveners, a decree was rendered against said Florida East Coast Railway Company, and the said Florida East Coast Railway Company having obtained an appeal and filed a copy thereof in the Clerk's office of said Court to reverse the decree in the aforesaid Court, and a citation directed to

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the United States, the Interstate Commerce Commission, Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association and East Coast Fruit and Vegetable Growers' Association citing and admonishing them to appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the 16th day of December, 1912.

Now, the condition of the above bounden obligation is such that if the said Florida East Coast Railway Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, the said Florida East Coast Railway Company has hereunto set its hand and seal, attested by its Vice President and Assistant Secretary, and A. V. S. Smith and F. O. Williams, as sureties, have hereunto set their hands and seals this 19th day of November, A. D. 1912.

FLORIDA EAST COAST RAILWAY COMPANY,

(Signed) By J. P. BECKWITH, [SEAL.]
Vice President.

Attest:
(Signed) H. S. JENISON,
Assistant Secretary.

(Signed) A. V. S. SMITH. [SEAL.]
(Signed) F. O. WILLIAMS. [SEAL.]

Signed, sealed and delivered in the presence of:

Witnesses for the Florida East Coast Railway Company:
(Signed) J. H. SUMMERLYN.
(Signed) AT JOHNSON.

1831 Witnesses for A. V. S. Smith and F. O. Williams:
(Signed) AT JOHNSON.
(Signed) J. H. SUMMERLYN.

STATE OF FLORIDA,
County of Duval:

Personally appeared before me J. P. Beckwith, Vice President of the Florida East Coast Railway Company, and H. S. Jenison, Assistant Secretary of said corporation, to me well known and known to me to be said officers and to be the persons who signed the foregoing bond, who acknowledged to me that they executed the same for and in behalf of the Florida East Coast Railway Company for the purposes therein expressed.

In witness whereof I have hereunto set my hand and official seal at Jacksonville, Florida, this the 19th day of November, A. D. 1912.

(Signed) LOU BECCA PINNELL,
[SEAL.] *Notary Public, State at Large.*

My Commission expires Jan. 27, 1915.

STATE OF FLORIDA,
County of Duval:

Personally appeared before me A. V. S. Smith and F. O. Williams, to me well known and known to me to be the persons who executed the foregoing instrument, who being duly sworn, say- each for himself that he is worth more than the sum of Five Hundred Dollars ($500) over and above all exemptions, debts and liabilities of every kind whatsoever.

(Signed) A. V. S. SMITH.
(Signed) F. O. WILLIAMS.

Sworn to and subscribed before me this 19th day of November, 1912.

(Signed) LOU BECCA PINNELL, [SEAL.]
Notary Public, State at Large.

My Commission expires Jan. 27, 1915.

Approved by
MARTIN A. KNAPP,
Presiding Judge.

1832 *Præcipe for Transcript of Record.*

Filed November 18, 1912.

UNITED STATES OF AMERICA:

In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association, et al., Interveners.

To the Clerk of said Court:

You will please prepare a transcript of the record in the above entitled cause to be filed in the Office of the Clerk of the Supreme Court of the United States upon the appeal of the above named petitioner, and include in the said transcript the following pleadings, proceedings and papers on file or of record, towit:

Petition for injunction;
Motion for temporary restraining order,
Order granting 60 days' suspension of order of Commission,
Order extending time to file bond,
Order naming Judge Archbald to take testimony,
Answer of Interstate Commerce Commission,

Answer of United States,

Petition of intervention of Florida Fruit and Vegetable Shippers' Association, et al.,

Notice of motion, Motion for leave to amend and amendments to petition,

Notice and motion to extend restraining order 60 days

Petitioner granted leave to file amended petition,

Motion of Interstate Commerce Commission to dissolve injunction,

Order granting Florida Fruit and Vegetable Shippers' Association, et al., leave to intervene,

Order granting preliminary injunction,

Order naming Judge Hunt to take testimony,

Bond,

Intervention Petition of Railroad Commissioners of Florida,

Testimony taken before Judge Archbald at St. Augustine, as printed for the use of the Commerce Court.

Testimony taken before Judge Hunt at St. Augustine, as printed for the use of the Commerce Court.

Testimony taken before Judge Hunt at Washington, as
1833 printed for the use of the Commerce Court,

Statements and Exhibits as offered by the Interstate Commerce Commission,

Additional exhibits offered before Judge Archbald, as printed for the use of the Commerce Court,

Additional exhibits offered before Judge Hunt, both at St. Augustine, and at Washington, as printed for the use of the Commerce Court, less duplications, including the original record before the Commission as far as pertinent, not printed.

Notice of motion of the United States to strike out,

Order granting Railroad Commissioners of Florida leave to intervene,

Order that answers of United States and Interstate Commerce Commission stand as answers to amended petition,

Opinion,

Decree,

Journal Entries of February 6 and 9, and 10, and June 26, 1912,

Petition for appeal, assignment of errors, order allowing appeal, citation on appeal and acknowledgement of service by Respondent and Intervenors.

FREDERICK C. BRYAN,
Counsel for Petitioner.

1834 *Stipulation.*

Filed November 26, 1912.

In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY et al., Petitioners,
v.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Stipulation Agreeing to Certain Facts and to a Diminution of the Record to be Certified by the Clerk of said Court to the Supreme Court of the United States in the Appeal of the Florida East Coast Railway Company in the Above-entitled Case.

It is hereby stipulated and agreed by and between the counsel for the parties to the above-entitled suit, as to facts and the record on appeal, as follows:

(1) That the original complaint, in case No. 1168, before the Interstate Commerce Commission, involved the rates upon fruits and vegetables from producing points in Florida to consuming markets in all parts of the United States east of the Rocky Mountains, and was considered under two divisions, viz: (1) A gathering charge from the points of origin to what were known as Florida base points, of which Jacksonville was the principal one; and (2) rates from the base points to points of final destinations in other states, the sum of the two rates constituting the through interstate charge. The issues and facts found are contained in the Commission's report in Florida Fruit & Vegetable Shippers' Protective Association v. Atlantic Coast Line Railroad Company, et al., 14 I. C. C. Rep., 476, and said report may be referred to on the hearing of said
1835 appeal by the Supreme Court of the United States for, and as a correct statement of the issues and facts in said proceeding; that each of the defendant carriers in said proceeding No. 1168 complied with the order of the Commission, by putting in and maintaining the rates fixed by the Commission, but said carriers did not put in force certain "suggestions" made in the report; that the Clerk shall omit from the record on appeal the certified copy of the evidence taken in and considered by the Commission upon said hearing, amounting to above 1000 pages.

(2) That subsequently, on June 8, 1909, a complaint was filed by the Florida Fruit & Vegetable Shippers Protective Association v. Alabama & Vicksburg Railway Company et al., known as No. 2566 on the Commission's docket, for the purpose of obtaining the benefits of the "suggestions" of the Commission in the former proceeding; this proceeding affected rates on fruits and vegetables from Florida base points to points outside of the state. The Clerk will

omit from the record any certified copies of testimony or records regarding this proceeding under the complaint of June 8, 1909, amounting to about 500 pages.

(3) Nos. 1168 and 2566 on the Commission's docket were again set for hearing on February 3, 1910, and a decision and report were made by the Commission February 8, 1910. The issues and the facts in this hearing are set forth in the report of the Commission in Florida Fruit & Vegetable Shippers' Association v. Atlantic Coast Line Railroad Company et al., 17 I. C. C., Rep., 552; and said report may be referred to on the hearing of said appeal for the statement of the issues and facts in said proceeding; that each of the defendant carriers in this last named proceeding complied with the order of the Commission; the Clerk will, therefore, omit from the
1836 record the certified copy of the evidence taken and considered by the Commission upon this hearing.

(4) That the records of evidence in the former proceedings referred to herein (paragraphs 1, 2 and 3) in so far as applicable, were considered by the Commission in the proceeding and hearing in which the order in controversy was entered.

(5) The Clerk will also omit from the record all documents and evidence regarding the financial standing of the surety in, and the sufficiency of, the bond to secure to shippers the repayment of the excess of freight paid in the event of the dissolution of the injunction, and also all affidavits and copies of tariffs and records introduced upon the hearing for the restraining order and the preliminary injunction.

(6) That after the entry of the order in controversy in this suit, and within the time specified in the order, all the defendant carriers in said proceeding, excepting only the petitioner herein, complied with the said order and have put in force, and are still maintaining, the rates on vegetables and citrus fruits fixed by the Commission in said order.

(7) The Clerk shall make this stipulation a part of the record, and include in the record, all pleadings and orders of the Court, including the opinion and final decree; the evidence taken by the Commission in the last proceeding, in which the order in controversy herein was entered (not including the evidence considered but taken in the previous proceedings herein directed to be omitted); the record of the evidence taken and considered by the said Court in this suit, the motion for appeal, and the assignment of errors.

1837 Dated Washington, D. C., November 25, 1912.

FREDERICK C. BRYAN,
For Florida East Coast Railway Co.
BLACKBURN ESTERLINE,
For the United States.
CHAS. W. NEEDHAM,
For the Interstate Commerce Commission.
____ ____,
For the Railroad Commission of Florida.
____ ____,
For the Florida Fruit & Vegetable Shippers' Association.

1838 *Order as to Record on Appeal.*

Filed November 26, 1912.

United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Railroad Commissioners of Florida, Florida Fruit & Vegetable Shippers' Protective Association et al., Interveners.

Order.

In the above entitled cause, an order having been entered allowing an appeal to the Supreme Court of the United States from the final order or decree of the United States Commerce Court entered November 14, 1912, and the Clerk having been directed to transmit to the Supreme Court a properly authenticated transcript of the record, proceedings and papers on which said order or decree was made and entered—

Now, pursuant to Section 2 of the Act of June 18, 1910, it is hereby ordered that the Clerk shall transmit to the Supreme Court from the files of the Commerce Court the original copy of the evidence taken before the Honorable Charles A. Prouty, Interstate Commerce Commissioner, at Jacksonville, Fla., on March 2, 1911, in cases numbered 1168 and 3808 on the docket of the Interstate Commerce Commission.

MARTIN A. KNAPP,
Presiding Judge.

November 26, 1912.

1839 United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,
vs.
UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association et al., Interveners.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, Clerk of the United States Commerce Court, do hereby certify that the above and foregoing transcript, together with the original filing of the evidence taken before the Honorable Charles A. Prouty, Interstate Commerce Commissioner, at Jacksonville, Florida, on March 2, 1911, in cases numbered 1168 and 3808

on the docket of the Interstate Commerce Commission, (on pages numbered 1 to 1843, inclusive) constitutes a true and complete record of the proceedings in the above entitled cause, made in accordance with the præcipe filed on the 18th day of November, 1912, and the stipulation filed on the 26th day of November, 1912, in the office of the Clerk of said Court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 27th day of November, A. D. 1912.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

1840 *Citation to Appellees.*

United States Commerce Court. Filed Nov. 18, 1912. G. F. Snyder, Clerk.

UNITED STATES OF AMERICA:

In the United States Commerce Court.

No. 58.

FLORIDA EAST COAST RAILWAY COMPANY, Petitioner,

vs.

UNITED STATES, Respondent; INTERSTATE COMMERCE COMMISSION, Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association et al., Interveners.

Citation to Appellees on Appeal from the United States Commerce Court to the Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

To the United States, Interstate Commerce Commission, Railroad Commissioners of Florida, Florida Fruit and Vegetable Shippers' Protective Association, East Coast Fruit and Vegetable Growers' Association:

You and each of you are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington in the District of Columbia within 30 days after the date of this writ and citation pursuant to an appeal allowed by the United States Commerce Court and filed in the Clerk's Office of the United States Commerce Court in the District of Columbia on the 15th day of November, 1912, in a case wherein Florida East Coast Railway Company, Petitioner, is Appellant, and the United States, Respondent, and Interstate Commerce Commission, Railroad Commissioners of Florida and Florida Fruit and Vegetable Shippers' Protective Association, et al., Interveners, are Appellees, to show cause if any there be why the order, judgment and decree rendered against said Appellant as in said appeal mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 15th day of November, 1912.

MARTIN A. KNAPP,
Presiding Judge.

1841 Service of the foregoing citation is hereby acknowledged this 16th day of November, 1912.

BLACKBURN ESTERLINE,
For the United States.

CHAS. W. NEEDHAM,
For the Interstate Commerce Commission.

____ ____,
For the Railroad Commissioners of Florida.

____ ____,
For the Florida Fruit and Vegetable Shippers' Protective Association, and East Coast Fruit and Vegetable Growers' Association.

1842 Service of the foregoing citation is hereby acknowledged this 6 day of November, 1912.

____ ____,
For the United States.

____ ____,
For the Interstate Commerce Commission.

F. M. HUDSON,
For the Railroad Commissioners of Florida.

Nov. 22, 1912.

____ ____,
For the Florida Fruit and Vegetable Shippers' Protective Association, and East Coast Fruit and Vegetable Growers' Association.

1843 Service of the foregoing citation is hereby acknowledged this 6 day of November, 1912.

____ ____,
For the United States.

____ ____,
For the Interstate Commerce Commission.

____ ____,
For the Railroad Commissioners of Florida.

A. A. BOGGS,
For the Florida Fruit and Vegetable Shippers' Protective Association, and East Coast Fruit and Vegetable Growers' Association.

Endorsed on cover: File No. 23,433. United States Commerce Court. Term No. 858. Florida East Coast Railway Company, appellant, vs. The United States, Interstate Commerce Commission, Railroad Commissioners of Florida et al. Filed November 27th, 1912. File No. 23,433.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 858.

FLORIDA EAST COAST RAILWAY COMPANY, *Appellant,*

vs.

THE UNITED STATES, *Respondent;* INTERSTATE COMMERCE COMMISSION, *et al., Interveners, Appellees.*

ON APPEAL FROM THE COMMERCE COURT.

MOTION TO ADVANCE.

This is a case brought to this Court on appeal from final judgment and decree of the Commerce Court, and under section 2 of the Act of June 18, 1910, crea-

ting said Court, is entitled to have priority in the Supreme Court over all other cases except criminal causes.

On the 6th day of November, 1911, the Interstate Commerce Commission entered its order reducing rates on the Florida East Coast Railway on citrus fruits and vegetables, effective January 2, 1912. On the 26th day of December, 1911, appellant filed its petition in the Commerce Court against the United States praying that said order might be enjoined and annuled on the grounds that said order was an assumption of power not authorized by law, that it deprived appellant of its property without due process of law, that it denied appellant the equal protection of the laws and of the right to receive just and fair compensation for services rendered to the public, and asked for a temporary injunction. An order was issued by Judge Carland, one of the judges of said Commerce Court, on the 30th day of December, 1911, granting a sixty days' extension of said order of the Interstate Commerce Commission, and prior to the expiration of said sixty days, to wit, on the 25th day of February, 1912, said Commerce Court after hearing granted a preliminary injunction as prayed for in the petition on the execution and approval of a bond in the sum of $100,000. This bond was duly approved and filed. The Interstate Commerce Commission intervened in said cause.

The case was argued and submitted to the Commerce Court on the 26th day of June, 1912, and on November 14, 1912, final order and decree was issued

by the Commerce Court vacating the preliminary injunction and dismissing the cause.

Said appellant thereupon filed its petition for appeal to the Supreme Court of the United States, and assignment of errors, and an order was duly entered on November 15th by Hon. Martin A. Knapp, Presiding Judge of said Commerce Court, allowing said appeal. A transcript of the record of said cause in the Commerce Court was on the 27th day of November, 1912, duly filed and docketed in the office of the Clerk of this Court.

In behalf of the appellant I therefore respectfully ask that the case be advanced and assigned for hearing as soon as the convenience of the Court will permit. Notice of this motion has been served on opposing counsel.

FREDERICK C. BRYAN,
Of Counsel for Appellant.

November, 1912.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 858.

FLORIDA EAST COAST RAILWAY COMPANY, *Appellant*,

vs.

THE UNITED STATES, *Respondent*; INTERSTATE COMMERCE COMMISSION, *et al.*, *Interveners*, *Appellees*.

ON APPEAL FROM THE COMMERCE COURT.

APPLICATION FOR A SUPERSEDEAS.

Now comes the Florida East Coast Railway Company, appellant, and makes this its application for an order superseding an order, judgment and decree of the United States Commerce Court entered No-

vember 14, 1912, and to suspend an order of the Interstate Commerce Commission entered under date of November 6, 1911, during the pendency of this appeal, and in support thereof states the following reasons and facts.

STATEMENT.

The Florida East Coast Railway Company is a corporation under the laws of the State of Florida, and its lines of railroad lie wholly within that State, extending from Jacksonville on the north to Key West, on the south a distance of 523 miles, that the distance from Jacksonville to Miami is 366 miles, from Miami to Homestead 28 miles, and from Homestead to Key West 128 miles.

The order of the Interstate Commerce Commission complained of in this cause was entered November 6, 1911, Florida Fruit and Vegetable Shippers' Protective Association vs. Atlantic Coast Line Railroad Company, *et al.*, 22 I. C. C. Rep., 11, and ordered a substantial reduction, effective January 2, 1912, in the rates charged by appellant for the transportation of citrus fruits and vegetables from the various points of origin to Jacksonville when for shipment to points beyond the limits of the State of Florida, and established new carload and less than carload rates materially lower than the rates on said articles then in force on said railroad.

On the 26th day of December, 1911, the appellant filed its petition in the Commerce Court of the United States against the United States and the In-

terstate Commerce Commission praying that said order of the Interstate Commerce Commission, dated the 6th day of November, 1911, might be enjoined, set aside and annulled and further that a temporary injunction might issue enjoining or suspending said order and any and all proceedings thereunder pending a final determination of the suit.

An order was entered by one of the judges of the Commerce Court on the 30th day of December, 1911, granting a sixty-day suspension of said order of the Interstate Commerce Commission. Prior to the expiration of said sixty days, to wit, on the 25th day of February, 1912, said Commerce Court after hearing granted a preliminary injunction as prayed for in the petition on the execution and approval of a bond in the sum of $100,000 conditioned to repay and refund to shippers on the Florida East Coast Railway the difference between the old rates charged and the new and lower rates fixed by the said order of November 6, 1911, of the Interstate Commerce Commission if the petitioner should fail to maintain its case. Said bond was duly approved and filed and is still in full force and effect. The Railroad Commissioners of Florida, the Florida Fruit and Vegetable Shippers' Protective Association and the East Coast Fruit and Vegetable Growers' Association were granted leave to intervene and became parties to the case. Testimony was taken in St. Augustine, Florida, and at Washington, and the case was argued and submitted on the 26th day of June, 1912. Final decree was entered by the Commerce Court November

14, 1912, vacating the preliminary injunction and dismissing the cause.

The said petitioner and appellant on the 15th day of November, 1912, filed in the said Commerce Court its petition for appeal to the Supreme Court of the United States and Assignment of Errors, and an order was duly entered on said day by the Hon. Martin A. Knapp, Presiding Judge of said court, allowing said appeal and a transcript of the record of said cause in the Commerce Court was on the 27th day of November, 1912, duly docketed in the office of the Clerk of this Court.

The order of the Interstate Commerce Commission complained of in this cause was the outcome of a series of hearings covering several transportation questions involving numerous carriers and extending over a number of years. The original complaint, No. 1168, was filed by the Florida Fruit and Vegetable Shippers' Protective Association on the 3d day of July, 1907, against the Atlantic Coast Line, Seaboard Air Line, Southern Railway, Florida East Coast Railway and other carriers, thirty in all, including several of the main trunk lines, and charged that freight rates on citrus fruits and vegetables from Florida points were unreasonable in themselves and unreasonable as compared with rates charged Florida competitors, that refrigeration charges were unreasonable and unjust, that no carload rates were furnished complainants from Florida points to Eastern markets on the Atlantic seaboard, and that rates from Florida to these points and to some points in the interior were unjust and unreasonable.

Testimony was taken in this case in Washington February 6, 1908, *et seq.*, and at Jacksonville, Florida, March 18 and 19, 1908. Only one shipper located on the lines of the Florida East Coast gave testimony at these hearings, and his evidence related solely to pineapples. Rates on pineapples are not now in issue. The case was submitted on argument May 11, 1908, and was decided June 25, 1908. See Florida Fruit and Vegetable Shippers' Protective Association vs. Atlantic Coast Line Rd., *et al.*, 14 I. C. C. Rep., 476. All-rail rates on oranges and pineapples from shipping points in Florida to Florida base points were found to be not unreasonable, but carload rates from the base points to the northeastern cities were found unreasonable and ordered reduced. The report of the Commission dealt entirely with rates from base points and the base point on the Florida East Coast is Jacksonville, its northern terminus, and the report and order of the Interstate Commerce Commission did not therefore affect appellant, as appears from the following quotations from the report:

ORANGES.

"Rates from Florida are made up as already seen of the local up to the base point, and the through rate from the base point. The reasonableness of the local rate may first be considered. * * * These locals up to the base points are in all cases established by the Florida Commission. * * *

"From an examination of the elaborate figures, which were introduced upon the trial show-

ing the character of the traffic handled by these Florida railroads, the conditions under which it is handled, their earnings, and the cost of operation running through a series of years, it is difficult to see how these railroads can be expected to transport in a suitable way this fruit and vegetable traffic from points of production to these basing points for a less sum than they now receive. It is difficult to see how, even upon the present tariff, those lines can in the immediate future expect to pay any considerable return upon their investment. We feel that these local rates, although they are high in comparison with other local rates, are as low as should be established under all the circumstances.

VEGETABLES.

"While these local rates are essentially part of the through charge and should be dealt with by this Commission as such, it is difficult to see how these Florida railroads can render a proper service upon a lower scale of rates than is now applied. It must be remembered that without the railroads this industry could not exist at all, and that to its satisfactory carrying on the character of the service is fully as important as the rate. It is better that these fruits and vegetables should reach the market on time, and in good condition, than that a few cents per box should be subtracted from the carrying charge. There was very little complaint as to the service; nor did the shippers who testified manifest any desire that these carriers should be required to accept less than reasonable compensation for that service. Our conclusion upon this branch of the case is that the present rates up to the

base point, while high in comparison with similar rates in other localities, are as low as they ought to be under the conditions obtaining upon these Florida lines, so that here, as in the case of oranges, the real question arises upon the rate from the base point to the Northern market."

On June 8, 1909, the same complainant, the Florida Fruit and Vegetable Shippers' Protective Association, filed its petition, No. 2566, in the Interstate Commerce Commission against the same Florida carriers and other railroads, 200 in number, complaining, among other things, of the rates on citrus fruits and vegetables on appellant's line of railroad. Testimony was taken in Jacksonville, Florida, December 20 and 21, 1909. Under date of January 12, 1910, the Interstate Commerce Commission rescinded its former decision in No. 1168 holding rates on fruits and vegetables from points on the Florida East Coast Railway to Jacksonville when for beyond to points in other States to be reasonable, ordered that the reasonableness of those rates be further considered and set the case down for final hearing on February 3, 1910, for the taking of additional testimony, having special reference to rates on pineapples, and for argument. No pineapples are grown in Florida except on the line of the appellant. Complainant had urged that rates on pineapples from Florida points should be reduced so as to permit the Florida growers and shippers to meet competition from Cuba. Appellant asked for reasonable time to procure the necessary evidence to show

the conditions and cost of raising pineapples in Cuba, but the application was denied. No additional testimony was offered. Cases No. 1168 and 2566 were argued and submitted together, February 4, 1910, and decided by the Commission February 8, 1910. Florida Fruit and Vegetable Shippers' Protective Association vs. Atlantic Coast Line Rd. Co., et al. Same vs. Alabama & Vicksburg Ry. Co., *et al.*, 17 I. C. C. Rep., p. 552.

At the hearing in Jacksonville before Commissioner Prouty, in December, 1909, counsel for the shippers declared (p. 84 of the testimony).

> In order to relieve anxiety, I will state that we are not at this time attacking the Florida East Coast rate up to Jacksonville under this petition. * * * * * The petition is confined to rates from the base points to points west."

Commissioner Prouty stated he did not understand the Florida East Coast rates were in issue (p. 281), and again, that so far as citrus fruits were concerned they were then trying the carload rates from Florida base points to the Ohio River and points north and west thereof (p. 25).

The first information appellant had that its rates were in controversy was a letter from Commissioner Prouty (Record p. 84), dated January 13, 1910, stating that upon the argument of the case the day before the Commission was strongly impressed with the critical condition of the pineapple industry and

the disadvantage under which it labored in the matter of freight rates. So strong was this feeling, Mr. Prouty stated, that the Commission issued the order of January 12 above referred to in order to further consider the reasonableness of rates on fruits and vegetables on the Florida East Coast with special reference to pineapples.

Appellant protested against this arbitrary action because (1) it did not give sufficient time to meet the new issue, (2) that the extraordinary crop of 1908 was no fair test of the pineapple industry as was shown by the tremendous falling off of the crop in subsequent years, (3) because the supplemental petition did not raise any issue with appellant except the single one of handling carload shipments at South Jacksonville. No testimony was taken at the hearing ordered for February 3, 1910, because sufficient time was not given appellant to secure the evidence in Cuba necessary in order to make a proper comparison between the cost of raising pineapples in Florida and in Cuba.

The opinion of the Commission, after quoting the second paragraph of the opinion in the former case set forth above, goes on to say:

> "The evidence produced upon the present hearing suggests no change in what was said so far as that applies to the Florida East Coast Railway. That line operates at the present time 477 miles of main line and 106 miles of branches. It has a first mortgage of $10,000,000, a second mortgage of $20,000,000, and a capital stock of $3,000,000, making in all $33,000,000. The cap-

italization, with the exception of about $4,000,000 represents an actual cash investment.

"It is urged by the complainant that the portion of the line from Miami south, which has cost some $14,000,000, was not at the present time a paying investment and that the balance of the line, from Jacksonville to Miami, ought not to be taxed with the cost of this construction. Admitting this to be so and laying out of view altogether the $14,000,000, which have been invested in that part of the property, it is still true that during the entire existence of the Florida East Coast Railway, so far as this record shows, that property has never earned in any single year 6 per cent upon the money invested, with the single exception of the year 1909. During much of this time its net earnings have been but little above its operating expenses. We certainly can not hold that these rates should be reduced because for a single twelve months, under what may be called abnormal conditions, this railway earned about 6 per cent on the money which has been actually invested in its construction. The years when no return has been received must certainly be given some consideration. Upon no other theory could private capital be induced to invest in the construction of railroads.

"While, however, we adhere to what was said in the previous case, we do think, upon more careful examination, that these rates of the Florida East Coast Railway on pineapples ought to be somewhat revised. They are not consistent with one another, and in our opinion those from the more distant points are too high as compared with rates from nearby points.

"The present rates are in any quantity. * * * In our opinion carload rates should

be established, which are less than the present any-quantity rates by 3 cents per box.

"The establishment of such carload rates will not of a certainty work a decrease in the net earnings of the carriers. It is a false theory of transportation which seeks to force the shipper to avail himself of a less-than-carload service, which is more expensive to render, for the purpose of increasing the gross revenues of the carrier. The true object should be to perform the service in the most economical manner and to charge for that service reasonable compensation. In the end this makes to the advantage of both the carrier and the patron. The Vice-President of the Florida East Coast Railway stated that he had always thought that carload rates should be established, and that in his opinion to establish carload rates 3 cents per box less than the present any-quantity rates would not prejudice the net revenues of his company, since he would make up by saving in operating expenses what he lost in gross revenue."

The order of the Commission in this case not only reduced appellant's rates on pineapples, but also on other citrus fruits. On the 4th day of April, 1910, appellant moved the Interstate Commerce Commission to rescind so much of the foregoing order as reduced its rates on citrus fruits, and the Commission on the same day in response to said motion entered its order in said case, No. 1168, modifying its order of February 8, 1910, for the following reason:

"Upon consideration of the record in the above entitled case, it appearing that the rates

> on oranges and other citrus fruits between the points involved, were not specifically assailed in the complaint,"

struck out the words "and citrus fruits" in said order, the new order read,

> "for the purpose and with the intention of making said order apply only to the transportation of pineapples, as therein set forth."

Thereupon, on the 16th day of November, 1910, complainant filed in No. 1168, in the Interstate Commerce Commission, its supplemental petition attacking appellant's rates on citrus fruits and vegetables. On February 1, 1911, the Railroad Commissioners of the State of Florida filed their petition of intervention, asking that appellant be ordered to reduce its rates on citrus fruits and vegetables, and to put into effect rates on carload and less than carload lots for citrus fruits not in excess of the rates then in effect on pineapples, and to reduce the rates on vegetables when for beyond Jacksonville to an equitable proportion of those permitted for pineapples.

The Railroad Commissioners of Florida on the 28th day of January, 1911, filed a petition against the Seaboard Air Line, Docket No. 3808, and on the same day, a petition against the Atlantic Coast Line, Docket No. 3808, Sub. 1, asking for the establishment on these railroads of the same rates they had asked to be fixed for the appellant. Testimony was taken in these three cases at Jacksonville, March 2, 1911. This was the first hearing at which appellant's

rates on citrus fruits and vegetables were specifically attacked. The fact that appellant's rates on pineapples had been reduced, which reduction had been accepted by the appellant, seemed to be relied on by the complainant and the Railroad Commissioners of Florida as a conclusive argument why oranges should be carried for the same rate as pineapples, and that vegetables should be carried at a lower rate. Counsel for the shippers said (p. 10 of that hearing) that the record as to vegetables was very voluminous and they merely expected to show at that time that the volume of business had largely increased and freight earnings had vastly increased, and on the crop then moving would increase more. Commissioner Prouty, who presided at the hearing, declared that the case would be decided on the old record, not on new testimony, but on the testimony taken in the old hearing (p. 116); that the rates on citrus fruits and perhaps on vegetables would be revised on the strength of the decision already made on pineapples, and on the same record (p. 118); that he thought the Commission should probably establish carload rates, but he did not think it would revise the former holding as to the reasonableness of less than carload rates (pp. 120, 121, 12, 68). Counsel for the Railroad Commissioners of Florida confirmed this view, saying (p. 151):

> "I understand the feeling of us all to be that we will submit this matter on the testimony already in these cases in regard to the carload rates, which have been discussed here. We do

> not at the present time desire to make a re-examination of the whole question such as was made here at the first hearing your Honor held in the city of Jacksonville."

The only new testimony of any importance offered at this hearing on behalf of the shippers was given by Mr. Burr, chairman of the Railroad Commissioners, who testified that it was estimated by shippers that 10,000 cars of tomatoes would be shipped from Dade County (the old county before Palm Beach County was created) in the season of 1911. As a matter of fact, shipments of all vegetables that season were less than 6,000 cars.

At this hearing Commissioner Prouty admitted that it cost appellant more to operate than it cost to operate the Seaboard Air Line and the Atlantic Coast Line, and for that reason appellant was entitled to charge a little higher rate. Notwithstanding this admission, the Commission, by its report and decision of November 6, 1911, ordered into effect on appellant's lines a reduction in rates which averaged 20 per cent on citrus fruits and vegetables and which were the same rates put into effect at the same time on the Seaboard Air Line and the Atlantic Coast Line. (See Florida Fruit and Vegetable Shippers' Protective Association vs. Atlantic Coast Line Rd. Co., *et al.*, 22 I. C. C. Rep., 11.)

The report of the Commission, comparing conditions when the order complained of was made with conditions as they existed when the first report was made in 1908 when higher gathering rates were sustained, said:

"No material change has taken place since then so far as this record discloses which would lead to a different conclusion if the same subject were before us today. The volume of business transacted has increased, but the expenses of operation have also increased to an extent which offsets the greater amount of business."

The Commission reported (p. 14) it found a material difference in one respect between 1911 and 1908, and that was in the movement up to the base point, that the carload movement had greatly increased and the cars were loaded much heavier than formerly, thus reducing operating expenses. There was no evidence, however, that such changed conditions did prevail on appellant's line, though they apparently did obtain on the other two lines involved in the hearing. Neither were appellant's operating expenses thereby reduced.

Among the considerations affecting the hearing of the Commission appears the following (p. 16):

"It was said that the present rates had been agreed upon by the railroads and the Florida Commission, in view of these competitive conditions, and that the relation of rates was satisfactory. It is also true that upon this hearing no particular locality was complaining of its rate as compared with other localities; but since the conclusion of the hearing the Commission has received in several instances petitions from different points of production insisting that the rates from those points were too high as compared with other points, and the proposed sche-

dules of the Florida Commission suggest a much greater reduction from present rates and more distant than at nearby points."

ARGUMENT.

The order of the Interstate Commerce Commission reducing appellant's rates on pineapples, which reduction averaged 4 cents a crate, was complied with, but the order was arbitrarily and unjustly made, contrary to the evidence, and the authority of the Commission was exercised in an unreasonable manner in depriving appellant of its day in court and making a precipitate ruling four days after hearing, reducing the rates on pineapples, and less than 30 days after appellant had been notified its pineapple rate was in issue, which was 20 days after the testimony was taken at which time appellant was assured both by opposing counsel and the Commissioner who presided at the hearing that its rates were not in issue. At this hearing the Interstate Commerce Commission gave appellant no opportunity to show the value of its property. Commissioner Prouty said (pp. 140-142) that they could not use that basis at all in fixing rates.

No reference would be made to this pineapple order, but for the fact that mainly on the strength of that order the shippers and the Railroad Commissioners of Florida claimed that appellant's rates on citrus fruits and vegetables should be reduced, which claim seems to have been conceded by the Commission, for the Commissioner who took the testimony said the case would be decided on the old record

and not on new testimony. Thus the appellant did not have its day in court on the first or second hearing in 1908 and 1909, because its rates were not then involved, and on the last hearing where its rates are involved most vitally it is notified that the case will be decided on the former record, thus effectually closing appellant's mouth entirely on the main issue of whether the proposed new rates are reasonable. The reduction ordered by the Commission and approved by the Commerce Court is confiscatory and deprives appellant of its property without due process of law, because the Commission gave it no such hearing as the law contemplates should be given.

The Commission overlooked one material difference between 1908 and 1911 in conditions on appellant's road, and that was the loss of revenue on pineapples. In 1909 1,110,548 crates of pineapples were shipped over the Florida East Coast at a revenue to the appellant of $270,889.92. On the ground that the rates were unreasonable and the pineapple growers in great need of relief the Commission reduced the pineapple rate from 3 to 4 cents a crate from the section where pine apples were produced. This reduction was based of course upon the assertion and the assumption that succeeding crops would be as large. In 1910, however, the crop unfortunately fell to 733,750 crates, and the revenue to $146,354, a loss of $124,525, and in the year ending June 30, 1911, the crop fell to 563,315 crates, or practically one-half what it was two years before, and the revenue was reduced to $119,290, or a total loss of $151,000 in the second year under the new rates. The reduction in

rates made by the Commission November 6, 1911, was based on the assertion and the assumption that the business handled by appellant in citrus fruits and vegetables was steadily increasing and would increase. The reduced rates then ordered into effect by the Commission would have meant a loss to appellant of $130,000 had the 1912 crop been as large as the crop of 1911. As a matter of fact, the citrus fruit crop for 1912 showed a loss of 30 per cent as compared with the same crop the year before, while the vegetable crop fell off one-half in the same period, which would have meant a loss in one year of $300,000 had not the passenger revenue, owing to the extension to Key West, largely increased. Appellant's tonnage of citrus fruits and vegetables is about one-sixth of its entire tonnage, is expensive to handle, because highly perishable, and it carries a much higher proportion of such freight than do other Florida carriers.

The testimony showed that at the time of the hearing the total investment in the Florida East Coast was $35,000,000 of which $10,000,000 was represented by 4½ per cent first mortgage bonds, $20,000,000 by 4 per cent income bonds, and $5,000,000 by capital stock. No dividend has ever been paid on this stock. The road was operated at a loss until the fiscal year ending June 30, 1909, when the net earnings were $194,362.87. The next year showed a balance to surplus of $113,924. On the strength of this showing the appellant voluntarily reduced its rates on all articles effective July 15, 1910, which cost the company on its next year's business $90,000, and was the prin-

cipal factor in reducing the surplus of the road for the year 1911 to $67,129. From July 1, 1911, to October 31, 1911, the operation of the road showed a deficit of $162,536, and the deficit at the end of the year was estimated to be much greater owing to the falling off in the citrus fruit and vegetable crop. For the eight months to February 29, 1912, the revenue of the road increased over the revenue for the same months the year before $257,000, but the operating expenses for the same period increased $303,000. The total receipts of the road have increased steadily for the last four years, as follows:

1908, $3,012,235; 1909, $3,375,459; 1910, $3,696,025; 1911, $4,202,892. The net earnings have never been 4 per cent of the cost of the road. The legal rate in Florida is 8 per cent. The appellant has never earned a reasonable profit on the money actually invested or on the present value of the road.

The rates of appellant on citrus fruits and vegetables were in 1908 found not unreasonable. In 1910 appellant voluntarily reduced its rates an average of 15 per cent. In 1911, without additional hearing but expressly on the record of the hearing in 1908 and 1909, appellant's rates theretofore found not unreasonable, were declared to be unreasonable and ordered to be reduced. There was no evidence of a change in conditions which would warrant the order of November 6, 1911.

The Commission itself declared in this case that one or two years of prosperity enjoyed by a carrier would not warrant a reduction in rates because the poor years must be also considered. The reduction

of rates on pineapples and on citrus fruits and vegetables on appellant's road were both followed by years of reduced production, which materially diminished appellant's revenues and would have done so without a reduction in rates. The rates were ordered reduced, because it was assumed production would continue to increase, which assumption proved incorrect. The order having been based on a false premise should fail.

Appellant's main line from Jacksonville to Miami is 366 miles. The company in 1893 obtained a charter to Key West. A State law of 1887 gave railroads a right of way through swamp and overflowed lands of the State, and appellant claimed the right under that law to build its extension. More formal authorization was given by the laws of the State of Florida, Chapter 5395, approved May 3, 1905. When the extension south of Miami was begun Key West was the end in view, otherwise there would have been no extension. It was so decided by the man who owned all the stock of the road, as found by the Commerce Court. No stockholders' meeting was necessary to determine his action. The new road reached Homestead in 1904, which was for a time the terminal. The extension to Knight's Key, 111 miles from Miami, was opened in 1909, and to Key West, 156 miles from Miami, in January, 1912.

The extension to Homestead was followed by great development in citrus fruits and vegetables in the territory adjacent. In the fiscal year 1911, the extension south of Miami produced 15 per cent of all the vegetables shipped over the road and 8 per cent

of all citrus fruits. The extension to Key West was followed by a very large increase of passenger revenue from travel to Cuba, which before that time went mainly by way of Tampa on the west coast of Florida. In 1910 the extension brought the net gain of revenue to appellant of $342,739. In 1911 the gross earnings of the extension were $554,055, while on the balance of the road they increased only $167,097, and the extension contributed to the net earnings $490,000 as against $827,000 furnished by the line from Miami to Jacksonville and all its branches. Instead of the extension increasing the burden of appellant's shippers, the company in July, 1910, voluntarily reduced its freight rates an average of 15 per cent, which reduced the total revenue in the next year $90,000. The Interstate Commerce Commission and the Commerce Court could only figure the appellant was making a profit by including the earnings brought to it by the extension.

The present value of the Florida East Coast from Homestead north, 488 miles in all, is $20,000,000 or $41,000 per mile. Allowing the same cost per mile for the 138 miles from Homestead to Key West would add nearly six and one-half million dollars, or a total of $26,500,000. The net earnings for 1911, $1,317,000, are only a trifle over 5 per cent of that sum, and less than 4 per cent on the total investment of $35,000,000. The earnings of the road have always gone back into the road, and it has no surplus or undivided profits.

Appellant's main line of road reaches from Jacksonville to Key West, over which through trains are

run daily without break. It is as much one and the same line for transportation purposes as it is from a physical standpoint. To cut the line in two at Homestead, as the court below did, means confiscation of appellant's property. The so-called extension to Key West was a necessary and far-sighted development. It was not the dream of a visionary or enthusiast, but was built as a practical business proposition which would earn a fair return if treated fairly. It is already justifying its construction and adding largely to the revenues of the road. To say that appellant's line south of Homestead is not to receive any support from the line north of Homestead, even on the basis of a cost of construction no greater than the average cost of the remainder of the road, when it already contributes more revenue to the main line than any of its branches, is confiscation, and taking appellant's property without due process of law. The right of appellant to earn a fair return on the money invested in the extension to Key West is absolutely vital to the welfare and development of the road, and the *status quo* should be preserved until the Court can render a final decision.

A bond for $100,000 was given by appellant in the Commerce Court, which bond is still in full force and effect. If this case finally goes against appellant, every one of its shippers will receive every cent to which he is entitled under the order of the Interstate Commerce Commission of November 6, 1911, reducing appellant's rates. A careful account is being kept of every shipment of citrus fruits and vegetables, and the difference between the old rate and

the rate ordered by the Commission will be promptly refunded every shipper if that order is sustained by this Court. On the other hand, appellant will be irreparably injured if this application for supersedeas is not granted, and appellant finally prevails in this Court. Appellant would have no adequate remedy to secure payment of that portion of the rates it had lost, for the difference would not be voluntarily paid, and very few of appellant's shippers have any property over and above the liberal exemption allowed by the Florida homestead exemption law, and would require a multiplicity of suits.

The policy or wisdom or necessity of the construction of this extension is not a subject of judicial review.

Florida Central & P. R. Co. vs. Bell, 44 Fla., 359,
Ulmer vs. Line Rock R. R. Co., 98 Me., 579,
Price vs. Pa. R. Co., 209 Pa., 81,
Boston, etc., vs. Bos. & W. R. R. Co., 40 Mass., p. 60.

The basis of all calculations as to the reasonableness of rates to be charged by public corporations is the fair value of the property at the time of fixing the rates.

Smythe vs. Ames, 169 U. S., 524,
San Diego Land & Town Co. vs. Jasper, 189 U. S., 19,
Wilcox vs. Gas Co., 212 U. S., 19.

A public corporation is entitled to earn a reasonable profit upon its entire business.

Consolidated Gas Co. vs. Mayer, 146 Fed., 150,
Chicago vs. Tompkins, 176 U. S., 167,
A. C. L. R. D. Co. vs. Florida, 203 U. S., 256,
Stanilaus County vs. Irrigation Co., 192 U. S., 201.

The Interstate Commerce Commission acted arbitrarily and unjustly in fixing rates on appellant's line, and exercised its authority in an unreasonable manner as to cause it to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power. The admission of the Commission that it received *ex parte* testimony against appellant after the hearing closed should be sufficient to warrant a reversal.

I. C. C. vs. Union Pac. R. R. Co., 222 U. S., 541,
Southern P. R. Co. vs. I. C. C., 219 U. S., 433,
I. C. C. vs. Ill. Cen. Rd. Co., 215 U. S, 452, 470.

The right of a railroad company to earn its operating expenses and fixed charges and a reasonable profit on the value of its property is beyond controversy.

Reagan vs. Farmers' Loan & Trust Co., 154 U. S., 402,
Lake Shore & M. S. R. Co., vs. Smith, 173 U. S., 684,
Minneapolis & St. L. R. R. Co., vs. Minnesota, 186 U. S., 257.

The Interstate Commerce Commission had no power or authority to make its order of November 6, 1911, complained of, except after due notice given and proper investigation was made; neither of which was done. It had no authority in law to single out part of the road, ignore it, and fix a rate based solely upon the earnings or cost of construction of the other part.

F. H. Peavey & Co. vs. Union Pacific R. Co., 176 Fed. Rep., 409,

Postal Tel. & Cable Co. vs. Adams, 155 U. S., 698,

Mo. K. & T. R. Co., *et al.*, vs. I. C. C., 164 Fed. Rep., 647.

Wherefore, the appellant prays this Court to grant an appropriate order superseding the judgment and decree of the Commerce Court and suspending, pending this appeal, the order of the Interstate Commerce Commission made under date of November 6, 1911, reducing the citrus fruits and vegetable rates upon the Florida East Coast, upon the giving of such bond as this Court shall direct and order in the premises.

FLORIDA EAST COAST RAILWAY COMPANY.
By FREDERICK C. BRYAN,
Of Counsel.

ALEX. ST. CLAIR-ABRAMS.
Solicitor.

District of Columbia, ss:

Frederick C. Bryan, being first duly sworn, deposes and says that he is counsel of Florida East Coast Railway Company, appellant, an incorporation of the State of Florida; and affiant further states that the facts stated in the foregoing application are true, and that the additional matters therein stated as upon information and belief or by way of argument and inducement, are true as he verily believes.

FREDERICK C. BRYAN,

Subscribed and sworn to before me this 27th day of November, 1912.

R. A. BARINGER,
Notary Public.

[Seal.]

Office Supreme Court, U. S.
FILED.
DEC 4 1912
JAMES H. McKENNEY,
CLERK.

No. 383

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

FLORIDA EAST COAST RAILWAY COMPANY, APPELLANT,

v.

THE UNITED STATES, RESPONDENT; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS, APPELLEES.

ON APPEAL FROM THE COMMERCE COURT.

SUGGESTIONS ON BEHALF OF INTERSTATE COMMERCE COMMISSION IN OPPOSITION TO THE APPLICATION FOR A SUPERSEDEAS.

CHARLES W. NEEDHAM,
Assistant Solicitor for Interstate Commerce Commission.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1912

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

FLORIDA EAST COAST RAILWAY COMPANY, appellant, v. THE UNITED STATES, RESPONDENT; Interstate Commerce Commission, et al., interveners, appellees.	No. 858.

ON APPEAL FROM THE COMMERCE COURT.

SUGGESTIONS IN BEHALF OF THE INTERSTATE COMMERCE COMMISSION IN OPPOSITION TO THE APPLICATION FOR A SUPERSEDEAS.

I.

The application for supersedeas herein seeks to confuse the issue by discussing, and quoting largely from, the records and reports in former cases before the commission, which are not involved in this suit.

This suit was brought to set aside an order of the Interstate Commerce Commission, entered on the 6th day of November, A. D. 1911, in two cases, which were heard and considered together, No. 1168,

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before the commission, *Florida Fruit and Vegetable Shippers Protective Association* v. *Atlantic Coast Line Railroad Co. et al.*, and No. 3808, *Railroad Commission of the State of Florida* v. *Seaboard Air Line Railway Co. and Atlantic Coast Line Railroad Co.* The Florida East Coast Railway Co. was a party defendant, and the Railroad Commission of Florida intervened as complainant in the first-named case.

The order complained of relates exclusively to the "rates on pineapples, citrus fruits, and vegetables on the Florida East Coast Railway Co., the Seaboard Air Line Railway, and the Atlantic Coast Line Railroad (within the State of Florida) to Jacksonville, Fla., when destined for points beyond in other States"; it found the existing rates unjust and unreasonable to the extent that they exceed the maximum rates prescribed by the commission in said order, and established what are called "distance rates" upon carload and less-than-carload quantities of pineapples, citrus fruits, and vegetables, with a minimum carload to be applied to each kind of traffic named; the rates fixed to be maintained for a period of not less than two years from January 2, 1912.

The interstate rates upon pineapples, citrus fruits, and vegetables from producing points in Florida had been before the Interstate Commerce Commission for investigation on three previous hearings. The precise questions involved, however, were not the same in each case. Orders were entered in two of the former proceedings, which have been complied

with by the carriers, including the petitioner herein, *and these proceedings and orders are not involved in this suit although largely dwelt upon by counsel for the appellant.*

Briefly stated these former proceedings are as follows:

The original complaint in case No. 1168 before the commission involved the rates upon fruits and vegetables from points in Florida to various consuming markets in all parts of the United States east of the Rocky Mountains. Those rates were considered *at the first hearing* under two divisions, viz: (1) A gathering charge from the point of origin to what were known as Florida base points, of which Jacksonville was the principal one, applicable to interstate traffic; and (2) rates from the base point to points of final destination in other States. The sum of the two rates constituted the through charge.

The first investigation was decided June 25, 1908 (14 I. C. C. Rep., 476). The commission held, *at that time*, that some of the rates from the base points to particular points of destination named in the order were unreasonable, but did not condemn as unreasonable the gathering rates from points of production to the base points.

This investigation and finding by the commission, although much discussed in the brief by counsel for the petitioner herein, is not in controversy in this suit. The carriers complied with the order of the commission, in so far as definite rates were fixed, *but did not*

accept certain suggestions which were made in the report.

Subsequently, on June 8, 1909, a complaint was filed with the commission by the Florida Fruit and Vegetable Shippers' Protective Association against the Alabama & Vicksburg Ry. Co. et al., No. 2566 on the commission's docket, for the purpose of obtaining the benefits of the suggestions of the commission in the former case and also to secure the establishment of rates on fruits and vegetables from Florida *base points to those portions of the United States not embraced in the previous order.* Two hundred railroads were named as defendants in this proceeding. As No. 1168 had been "retained for further proceedings," and shippers on the Florida East Coast Line asked that the rate on pineapples be applied to citrus fruits and a proportionate rate be applied to vegetables, this case was again set down for hearing with No. 2566, and it was stated that the previous record in No. 1168 would be treated as a part of the record in No. 2566. This hearing was commenced before the commission at Washington on February 3, 1910, and concluded on the 4th.

A decision was rendered February 8, 1910 (17 I. C. C. Rep., 552), a separate order being entered in each case. The order against the Florida East Coast Railway, No. 1168, found the existing rates unreasonable on *pineapples* "from points on the Florida East Coast Railway to Jacksonville, Florida, when applied to interstate traffic, and fixed certain maximum rates to the transportation of pineapples" in carload and

less than carload quantities, the carload minimum being 300 crates, "from points of production upon defendant's line of railway to Jacksonville, Florida, when destined for points beyond in other States."

The order in No. 2566 affected and changed the rates on *citrus fruits, pineapples, and vegetables* "from Jacksonville, Florida, and other Florida base points" to points particularly named in other States.

Subsequently, on October 25, 1910, there was a hearing before Commissioner Prouty "asking the commission to fix the division of through rates," etc. This hearing and the evidence taken has no bearing upon or relevancy to the order in question.

These orders of February 8, 1910, were complied with by the carriers, including the appellant, *and are not in controversy in this suit.*

II.

The proceeding in which the order in controversy was entered.

On January 28, 1911, the railroad commissioners of the State of Florida filed with the Interstate Commerce Commission complaints against the Seaboard Air Line Railway and the Atlantic Coast Line Railroad Company complaining of the rates charged for the transportation of citrus fruits and vegetables from points in Florida to the base points as applied to interstate shipments.

This case is known as No. 3808 on the commission's docket and was set down for hearing before Commissioner Prouty at Jacksonville, Florida, March 2,

1911. The Florida Commission also intervened in No. 1168 and this case was set down for further hearing with No. 3808 regarding the gathering rates upon fruits and vegetables upon the Florida East Coast Railway in order that the whole field and subject of gathering rates from all producing points in Florida to the base points—principally Jacksonville—could be considered. The evidence taken upon this hearing, on which the order in question was entered, is before the court and, *as to regularity of procedure in entering the order in question*, should be treated independently of the records in the former hearings.

At this hearing each party complainant and defendant in cases Nos. 1168 and 3808 was present. The sole issue before the commission in this investigation was stated by Commissioner Prouty, at the opening of the hearing, as follows (page 5):

> Gentlemen, we are here once more to take up the *fruit and vegetable* question, *this time from the point of production up to the base point.* * * * I think these three proceedings put in issue rates generally on vegetables and citrus fruits from points of production in Florida up to the base points. * * *
>
> Who appears for the Florida East Coast Railway Company?
>
> Mr. St. Clair-Abrams. I do.

Other attorneys appeared for each of the other carriers and the complainants in both cases. The order in this case is found on pages 33, 34, and 35 of the appellants' petition filed in the Commerce Court. It applies the "distance scale of rates" to the trans-

portation of citrus fruits, vegetables and pineapples from all points upon the three lines of railroad in Florida to Jacksonville.

These proceedings were instituted by the railroad commissioners of Florida, whose duty it was, under the Florida statute, to inquire into the reasonableness of rates, and if, after investigation, it should be of opinion that any of the interstate rates charged to people within the State were unreasonable, to apply to the railroads operating within the State for a modification of the tariffs; and, if unsuccessful, to institute proceedings before the Interstate Commerce Commission. The present proceedings were against all of the roads in the State and were instituted for the purpose of unifying the gathering rates throughout the State upon a mileage or distance basis.

In reference to vegetables, the commission found that—

> Taking everything into consideration we are of the opinion that the vegetable rate in carloads should be per crate approximately 70 per cent of the orange carload rate per box when under ventilation and 80 per cent under refrigeration. The less-than-carload rate may exceed the ventilated carload rate by 2 cents per standard crate, up to distances of 300 miles, beyond that by 3 cents.

Upon these general findings the order establishes certain carload and less-than-carload distance rates upon pineapples, citrus fruits, and vegetables under refrigeration and under ventilation. These maximum

rates were fixed by the commission and enforced against all three of the defendants in this investigation.

The commission in its report says:

> Taking that [financial condition of the Florida East Coast Railway] into account, together with all the other facts and circumstances bearing upon the matter, we are of the opinion that the rates suggested for the Seaboard Air Line and the Atlantic Coast Line in the State of Florida would be just and reasonable to apply upon the railroad of the Florida East Coast Railway Company. Those rates are already in effect upon pineapples and do not involve any extraordinary reductions from the rates on vegetables and citrus fruits which that company has voluntarily established.

The Commission further says:

> We are, then, of the opinion that those rates upon pineapples, citrus fruits, and vegetables which would result from the application of the distance tariff given below upon the lines of the Florida East Coast Railway Company, the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railway from points in Florida up to Jacksonville, when for beyond, would be just and reasonable, that they ought not to be exceeded for the future, and that the present rates of those carriers are unjust and unreasonable to the extent that they exceed such rates.

It will be observed that the commission finds these maximum rates to be reasonable upon each railroad

concerned and also finds the rates prevailing upon these railroads, respectively, unreasonable to the extent that they exceed the maximum rates fixed by the commission. The result of this order was to establish reasonable and uniform gathering distance rates upon pineapples, citrus fruits, and vegetables from every producing district in the State of Florida to Jacksonville, the base point, when applied to interstate traffic. All undue discrimination between producing localities as to these gathering rates was thereby precluded.

In considering the validity of the order in controversy, as to the regularity of procedure, the record of the proceedings subsequent to January 28, 1911, including the taking of evidence at Jacksonville, March 2, 1911, is the record and the only record that should be considered; this record was the one upon which the order was entered, and by it alone the validity of the order must be determined.

There were no questions of law involved. There was a full hearing. No evidence was refused; all was considered.

Every step required by the act to regulate commerce was observed. A full report in writing was made. The conclusions of the commission and its decision upon the issue raised in this investigation are clearly set forth and the order follows the report. Copies of the report were furnished as required, and two of the carriers—the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railway Com-

pany—have complied with the order by filing their tariffs in conformity therewith.

The petitioner does not state wherein the commission has in any particular failed to comply with the requirements of the statute. On the contrary, the record submitted to the court shows that the commission, both as to the investigation and order, proceeded according to law.

III.

The rates are not confiscatory.

There is not a scintilla of evidence to contradict the statements of the railway commissioner of Florida and other witnesses that the cost of handling citrus fruit is no greater or different than that of transporting pineapples. Nor are there any reasons given by the defendant carrier why vegetables should not be put upon a carload-earning basis with fruits.

Mr. Kirtland, the traffic manager of the Florida East Coast Railroad, gives some interesting testimony and statistics regarding the cost of transportation and profits of this business. In reference to the cost he says that rate making has not been reduced to a science, but that in a general way it was figured that a rate must not go below ½ cent (5 mills) per ton per mile; that the rates fixed by the order in question on citrus fruits from Miami to Jacksonville would be 1.7 cents, or 17 mills, per ton per mile. Accepting these figures as a safe basis of calculation, this would show that the rates fixed by the order gave a profit,

over the cost of transportation, of 12 mills per ton per mile.

This witness also figures the cost of the income per car on the haul from Miami to Jacksonville at $78; twelve-seventeenths of this would be about $54 per car profit. The rates on coal, fertilizers, etc., for the same distance was $36 per car.

This witness also states that they carried pineapples from Key West to Chicago for 66½ cents, out of which was paid lighterage 3 cents and boat 15 cents, leaving a net of 48½ cents per 100 pounds for carrying Cuban pineapples from Jensen to western points, while the charge to the Florida grower for the same distance was 74 cents per 100 pounds. The Florida East Coast Railway Co. received a proportion of this rate for its haul to Jacksonville. He says that there was a profit on the Cuban business, and they considered it a good business.

Without further reviewing the evidence, it is sufficient to say that the evidence clearly shows that the rates authorized by the order in question gave to the carriers a large profit above the actual cost of the transportation service. When we say cost of transportation service we exclude, of course, return upon the investment. The profit above cost of service is the amount which can be applied by the company to interest, dividends, or other purposes.

IV.

Confiscation can not be predicated of a reduction of the total revenues of the carrier caused by an order reducing a single rate or rates upon a particular traffic.

1. In passing upon an entire system of rates constructed by the carrier it must appear, and the court must determine, that all classes of traffic are charged relatively reasonable rates or that competition exists as to some class or classes that justifies the carrying of such traffic at less than a relatively reasonable rate.

2. It must be determined that no particular traffic is unduly burdened by being charged unreasonably high rates in order to take care of and reimburse the company for carrying another class of traffic at unreasonably low rates.

3. The ascertainment of the value of the entire property of the carrier put to the public use is only necessary where a system or tariff of rates is under consideration.

The determination of these facts is most important where it is claimed that the reduction of a single rate, operating to reduce the total revenues, results in confiscation. Where it is claimed that a system of rates established by legislative authority, considered as an entirety, results in confiscation, there is a presumption that all individual rates in the tariff are reasonable. In a tariff constructed by the carrier a particular traffic may be charged unreasonably high rates to enable the company to carry other traffic at cost, or

even below cost; this fact could only appear upon an examination of all the rates established by the railroad company in its tariff, and a *determination* that they were reasonable. As such system of rates is established by the railroad and not by legislative authority, there can be no legal presumption that all the rates charged in the tariff are reasonable. To allow the railroad company to dodge the issue as to the reasonableness of its entire tariff of rates, while claiming that the reduction of a single rate operates to reduce its gross revenue and therefore confiscates its property, would work grave injustice; in fact, it would, in most cases, perhaps, prevent the reduction of individual rates which are unreasonable *per se*.

We respectfully submit that there is no jurisdiction in the Commerce Court to institute an original inquiry as to the reasonableness of the rates in petitioner's tariff; it can not be considered in its entirety, and therefore a valuation of its property is irrelevant.

CONCLUSION.

As the questions involved in this case *are wholly questions of fact* as to single rates, and, by the decisions of this court, within the jurisdiction of the Interstate Commerce Commission to determine, the order should not be further stayed. Over one year of its life has passed. The shippers on the east coast are entitled to have and should enjoy, together with producers in other parts of the State of Florida, the benefit of these uniform distance rates. A bond

to repay the excess rates charged at the end of the litigation is of little practical value to the great number of small fruit and vegetable growers. The expense of proving their claims will not warrant the effort to recover reparation.

Respectfully submitted.

CHARLES W. NEEDHAM,
Assistant Solicitor for
Interstate Commerce Commission.

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In the Supreme Court of the United States.

OCTOBER TERM, 1912.

FLORIDA EAST COAST RAILWAY COMPANY, appellant,
v.
THE UNITED STATES, RESPONDENT; INTERSTATE COMMERCE COMMISSION et al., interveners, appellees.

No. 858.

ON APPEAL FROM THE COMMERCE COURT.

SUGGESTIONS IN OPPOSITION TO THE ISSUE OF A SUPERSEDEAS.

Upon the complaint of the Florida Fruit and Vegetable Shippers' Protective Association the Interstate Commerce Commission ordered that the Florida East Coast Railway Company, the Atlantic Coast Line Company, and the Seaboard Air Line Company should reduce freight rates upon citrus fruits and vegetables. (Report of the commission, *Appendix II, p. 12.*)

The Atlantic Coast Line and the Seaboard Air Line complied with this order.

The Florida East Coast Railway sued in the Commerce Court to set aside the order, but the bill was dismissed, the Commerce Court holding that the

reduction in rates was proper. (Opinion of Commerce Court, *Appendix III.*)

The Florida East Coast Railway Company, having appealed from the decision of the Commerce Court, now moves for a supersedeas to restrain the reduction in the rates pending the appeal. This motion should be denied.

First. Inasmuch as both the Interstate Commerce Commission and the Commerce Court have decided that the reduction in the rates was proper, and inasmuch as the other railroads have submitted to it, there is no reason why this railroad company should, pending the appeal, be allowed to continue to collect the exorbitant rates which two tribunals have condemned and to subject the communities concerned to the consequent commercial disadvantage and financial loss.

Second. Irreparable injury must inevitably be suffered by the shippers along the east coast of Florida from the issue of a supersedeas.

Already they have been deprived by this litigation of the advantage of the reduced rates for one year out of the two years' life of the Commission's order. A supersedeas will in all probability cost them the advantage of the order for the remaining year, inasmuch as the shipping season covers only the months from January to June. (Affidavit of Chase submitted in opposition to the motion and attached hereto as Appendix I.)

(*a*) One source of this irreparable injury to the shippers lies in the fact that their competitors who

ship on the western coast of Florida by the Seaboard Air Line and the Atlantic Coast Line are having the advantage of the reduced rates because those two lines submitted to the order of the commission without contest and put the lower rates into effect. The loss of business to the shippers on the east coast from this advantage accruing to their competitors can never be recovered.

(*b*) Another source of such irreparable injury to the shippers lies in the fact that as a practical matter only a very small percentage of the excess freight charges paid by them can be recovered. The affidavit shows that out of the estimated excess payments aggregating $200,000 on shipments of tomatoes, 95 per cent would involve claims averaging from $1.90 to $3 apiece, and, as is obvious from the figures, the cost and difficulties of presenting such claims, especially if they should be contested, is prohibitive. The affiant states that "the bulk of the claims, not only in tomatoes but in the other articles, would be a dead loss in the practical outcome of the situation." Obviously no bond is of any value to the holders of these individual small claims.

The public of the east coast of Florida should not be further denied the benefits of the reduced rates.

Third. If, however, a further stay is to be granted, it should be only on condition that the railroad shall issue negotiable certificates to the shippers for the amount of any excess charges collected, so as to reduce to a minimum the difficulties of proof and

legal proceedings on the part of the shippers for reparation of such payments. The requirement of such scrip was made in the following important cases:

(1) *Consolidated Gas Co.* v. *Mayer*, 146 Fed. 150. Excess impounded in court.

(2) *Ex parte Wood*, 155 Fed. 190 (N. C., 1907). Passengers received coupons. Railroad gave bond to redeem them in cash.

In the following cases, although it does not appear in the report what the exact terms of the decree were, it is to be presumed that similar scrip was issued, since they expressly follow the cases above.

(3) *Southern Ry.* v. *McNeill*, 155 Fed. 756, 790 (N. C., 1907). Purports to follow the Wood case. Railroad had to give bond to pay *into the registry of the court* a sum sufficient for repayment of excess charges.

(4) *Buffalo Gas Co.* v. *City of Buffalo*, 156 Fed. 370 (N. Y.). Temporary injunction against a rate reduction granted on condition that the company *pay into court the excess* above the rate prescribed by the commission; to be repaid in case the rate was held valid. The exact method left to be agreed upon by counsel. They failing to agree, to be determined by the court.

(5) *San Francisco Gas & Electric Co.* v. *City of San Francisco*, 164 Fed. 884–893 (Cal., 1908). Followed Consolidated Gas case and compelled payment into court of the excess collected.

(6) *Spring Valley Water Co.* v. *San Francisco*, 165 Fed. 667 (Cal., 1908). Excess

impounded as in Consolidated Gas Co. case. Court says (p. 713):

"I am aware that impounding such funds will occasion much inconvenience, but I believe such inconvenience will be counterbalanced by the additional assurance to consumers of prompt, equitable, and gracious distribution in case it be finally decided that such moneys or any portion of them ought to be returned. Another and weightier reason prompts such a course. On a preliminary motion like this the testimony is not ripe for final consideration, and there is of necessity a wide margin of uncertainty. The court should therefore proceed with caution, and if it retains control of these funds until final decree it will then be possible to correct any errors which may have been made without serious loss to anyone who may be injured by said order, and it will be possible to maintain such fund intact until the imperfections and errors of this proceeding and in this court are corrected by the Court of Appeals."

Practically no remedy, either by giving of bonds for repayment of the excess or by actual payment into court, can be effective without the issue of negotiable certificates. The accounts are trifling, numberless, and complicated. The litigation may consume a considerable period of time. The great advantages of a scrip system appear from the difficulties which arose in the case of—

Central Trust Company v. *New Amsterdam Trust Co.*, 167 Fed. 983. Payment into

court of excess charges. But no issue of scrip. Litigation took two and one-half years. The books showed running accounts for gas with 873,000 individuals. The clerical work of administering the fund was so endless that all the interest upon the impounded money was consumed.

Fourth. Shippers should not be deprived of the commercial benefits of reduced rates ordered by the Interstate Commerce Commission and approved by the Commerce Court excepting in cases of a really serious probability that both the commission and the Commerce Court were in error.

If the Commission and the Commerce Court are correct, then the shippers would suffer irreparable injury from the issue of a supersedeas.

CONCLUSION.

The motion for supersedeas should be denied, or at most should be granted only upon condition that the railroad company issues negotiable scrip for the repayment to bearer, on demand, of all excess charges collected.

WILLIAM MARSHALL BULLITT,
Solicitor General.

WINFRED T. DENISON,
Assistant Attorney General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

DECEMBER, 1912.

APPENDIX I.

(Certified copy of affidavit of Joshua C. Chase.)

IN THE UNITED STATES COMMERCE COURT.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation, petitioner,
v.
UNITED STATES, RESPONDENT.
} No. 58.

AFFIDAVIT OF JOSHUA C. CHASE.

UNITED STATES OF AMERICA,
State of Florida, County of Duval, ss:

Personally appeared before me the undersigned, Joshua C. Chase, who, being duly sworn, deposes and says:

I am the representative at Jacksonville for the Florida Fruit & Vegetable Shippers' Protective Association, an organization composed of numerous growers and shippers of citrous fruits, vegetables, and pineapples in the State of Florida.

I am, and long have been, familiar with that business and that traffic, both through my experience in this capacity and through my own business advantages, the concern of Chase & Co., receivers, handlers, and shippers of these products.

I have been familiar with the various proceedings concerning the railroad rates on these goods, and have had part in those proceedings which have been brought before the Interstate Commerce Commission by the said association.

If the Florida East Coast Railway Company is relieved from the duty of reducing the rates as directed by the Interstate Commerce Commission pending the determination of this suit, the shippers of the products concerned over this line, who number approximately three thousand, will suffer irreparable and very substantial loss and injury.

The season for these shipments has begun and will very soon reach its height. That season begins on or about the first of January and extends to or about the end of June.

The result of the preliminary injunction, if now granted, will be to deprive the shippers of the benefit of the commission's order for the whole portion of the year in which the order is valuable.

The lower schedule of rates has been acceded to and promulgated by the Seaboard Air Line and the Atlantic Coast Line, which serve the growers of these products on the western coast of Florida, and these shippers are competitors of deponent and the other shippers who are served by the petitioner, Florida East Coast Railway Company. So long as these competitors have the advantage of the lower rates, the shippers over the Florida East Coast Railway are bound to suffer in the markets in which they both deal, and there is no way known to deponent by which the loss which will thus be suffered will ever be repaired.

In so far as the injury to the shippers consists in the mere payment of excessive freight rates, which might nominally be the subject of action for reparation before the Interstate Commerce Commission, a very large number of the shippers will still suffer irreparable loss.

Irrespective of anything that can be done by any possible association toward the uniting and common handling of the claims of all of the 3,000 shippers, the petitioner railroad will still be at a decided advantage as compared with the shippers in respect to the handling of such claims. It will not, under any conceivable conditions, be possible to unite the claims even of all the shippers, to say nothing of the consumers, to any such extent as the railroad is able to consolidate its defense.

A very large number of the growers ship their goods to commission merchants outside of Florida, and these commission merchants handle the freight charges and deduct them from their account to the growers. In all this class of cases the evidence necessary for claims for reparation would be in the hands of these commission merchants.

A very large number of the shippers are nonresidents of Florida, who come into the State for the season and take the crop for selling. These handlers do the shipping, pay the freight, take the shipping receipts, conduct the negotiations with petitioners, and then at the close of the shipping season leave the State and do not return. In such cases the owners or growers would be practically unable to collect the excess freight charges, because the freight bills or receipts go to the said handlers.

Another large group of growers of vegetables are nonresidents of Florida, who come into the State and lease lands for a single crop, and as soon as the crop is grown and marketed leave the State. These persons are scattered and inaccessible, and their claims could practically not be brought into a common proceeding.

The cost of proceedings brought by any association of shippers to recover back excess charges will certainly be greater than would be the cost to the petitioner railroad company to bring proceedings to recover the amount of under payment, because the securing of the evidence for all of the 3,000 cases, scattered as they are, would be extremely difficult and expensive, whereas the railroad has all that material concentrated and immediately available.

Even if the larger proportion of the 3,000 scattered shippers did combine a very large proportion of their claims, they would still be, even when handled in combination, too small to make it worth while for the association to provide the clerical work necessary for the collection, analysis, and presentation of the necessary evidence.

Approximately 45 per cent of the tomatoes shipped are owned by 15 or more growers to a car, and the average excessive freight (assuming the commission order to be finally determined invalid) would be $24 per car, which would be an average of $1.90 per claim.

Not more than 5 per cent of cars loaded with tomatoes are shipped by one grower per car, and this maximum claim in the case of tomatoes would be $24.

The balance of approximately 50 per cent are shipped by from 2 to 15 growers per car, or an average of, say, 8, and their average claim would be $3 per car.

In my opinion, the bulk of the claims, not only in tomatoes, but in the other articles, would be a dead loss in the practical outcome of the situation.

I do not know of any practical way in which the consumers, who ultimately pay the excessive freight in the price of the goods, could recoup themselves for that loss.

Based on the figures of previous seasons, the excessive freight charges will aggregate $129,990 for this present season, of which approximately $120,000 will be the loss on tomatoes and $9,990 the loss on citrus fruits.

JOSHUA C. CHASE.

Subscribed and sworn to before me this 5th day of February, A. D. 1912.

[SEAL.]

E. O. LOCKE,
Clerk United States District Court,
Southern District of Florida.

A true copy.

Test:

[SEAL.] _____,
Clerk of the United States Commerce Court.

OPINION No. 1687.

BEFORE THE

Interstate Commerce Commission.

No. 1168.

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Nos. 3808 and 3808 (Sub-No. 1).

RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA

v.

SEABOARD AIR LINE RAILWAY ET AL.

Decided November 6, 1911.

REPORT OF THE COMMISSION.

No. 1168.

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE ASSOCIATION

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Nos. 3808 and 3808 (Sub-No. 1).

RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA

v.

SEABOARD AIR LINE RAILWAY ET AL.

Submitted May 25, 1911. Decided November 6, 1911.

From the facts disclosed by the record; *Held*, That the rates upon pineapples, citrus fruits, and vegetables which would result from the application of the distance tariff given in the report herein upon the lines of the Florida East Coast Railway Company, the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railway from points in Florida up to Jacksonville, when destined for points beyond in other states, would be just and reasonable; that they ought not to be exceeded for the future; and that the present rates of those carriers are unjust and unreasonable to the extent that they exceed such rates.

Louis C. Massey for Railroad Commission of Florida.

A. A. Boggs for Florida Fruit & Vegetable Shippers' Protective Association.

R. Walton Moore for Seaboard Air Line Railway and Atlantic Coast Line Railroad Company.

Alex. St. Clair Abrams for Florida East Coast Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner:*

No. 1168 is now before us upon a supplemental petition filed by certain shippers upon the line of the Florida East Coast Railway, which is the sole defendant in the present proceeding. The original complaint was against numerous defendants and involved a general attack upon the rates imposed for the transportation of fruits and vegetables from points in Florida to various consuming markets in all parts of the United States east of the Rocky Mountains. Those rates were then stated in two parts. There was first a gathering charge from the point of origin to what were known as Florida base

points, of which Jacksonville was the principal one, applicable to traffic destined beyond those base points; and second, a rate from the base point to the consuming destination applicable to traffic which had moved by rail up to the base point. The sum of these rates constituted the through charge.

In the original case the Commission examined the two sets of rates separately. It held that rates from the base points were excessive but approved as reasonable the rates then in effect from points of origin up to the base points. That holding applied to rates upon the Atlantic Coast Line and the Seaboard Air Line as well as upon the Florida East Coast Railway. *Florida Fruit & Vegetable Shippers' Protective Asso.* v. *A. C. L. R. R. Co.*, 14 I. C. C. Rep., 476.

In a subsequent supplemental proceeding instituted by pineapple growers located upon the Florida East Coast Railway, who insisted that Cuban competition was imperiling the existence of their industry, and that the Florida East Coast Railway was maintaining rates which discriminated against the Florida pineapple, we further considered the gathering charge upon pineapples from points of production upon the Florida East Coast Railway to Jacksonville. *Florida Fruit & Vegetable Shippers' Asso.* v. *A. C. L. R. R. Co.*, 17 I. C. C. Rep., 552.

The gathering rates approved by the Commission in the original case had been in all instances any-quantity rates. The Commission now held in this supplemental proceeding that a distinction should be made in case of pineapples between carload and less-than-carload shipments and established a distance tariff upon the Florida East Coast Railway for the transportation of pineapples in carloads and less than carloads from the various points of origin to Jacksonville when for shipment beyond.

Shippers upon the Florida East Coast Railway now ask in the petition before us that the same rates which were established for pineapples be applied to citrus fruits; and, further, that proportionate rates per 100 pounds be applied to vegetables. In this proceeding the railroad commission of the state of Florida has intervened in favor of the complainants.

No. 3808 is a proceeding by the railroad commission of Florida against the Atlantic Coast Line and the Seaboard Air Line railways to compel the establishment of gathering rates by these railroads upon pineapples, citrus fruits, and vegetables upon a substantially lower scale than is now in effect. Schedules are filed with the petition setting forth in detail the present rates and the rates prayed for. The present rates are in all cases any quantity; those asked for are both carload and less than carload. In few, if any, instances are the rates prayed for higher than would result from the establishment of

the distance schedule applied to pineapples upon the Florida East Coast Railway; in many instances they are materially lower.

It will be seen, therefore, that in these two proceedings all the gathering charges in the entire state of Florida, except the rates on pineapples now in force upon the Florida East Coast Railway are under attack, and that these proceedings are instituted by or have the support of the railroad commission of that state.

It should be noted here that to-day no base points are used in stating these rates from points of origin upon either the Seaboard Air Line or the Atlantic Coast Line, the rate named being a through rate from the point of origin to destination; but this through rate has been in all cases constructed by adding together the rate established by us from the base point and the rate approved by us up to the base point. If, therefore, we should be of the opinion that these gathering charges were too high it would involve in some form a reduction of the through rate upon those lines by the amount of our reduction of the former gathering charge. Upon the Florida East Coast Railway the two rates are still stated separately.

The statute of Florida requires the railroad commission of that state to inquire into the reasonableness of interstate rates applying to the movement of traffic into and out of the state. If, after investigation, the commission is of the opinion that such rates are unreasonable it is made its duty to apply to the railroads operating within the state for a modification of these interstate tariffs; and if no such modification can be obtained and it still seems to the commission that the rates are unreasonable that body is instructed to institute proceedings before the Interstate Commerce Commission.

Numerous complaints were made to the railroad commission of Florida that these fruit and vegetable rates up to the base points were excessive, and that commission, for the purpose of informing itself, held investigations in all parts of the state where these defendants operate.

It found a general feeling among growers that the rates were extravagant, for the reason apparently that the industry under the present rates was not sufficiently profitable. From its investigation it reached the conclusion, as stated by its chairman, that these rates were too high. It therefore took the matter before the railroads interested and, failing to obtain satisfaction, filed its complaint No. 3808 and intervened in support of the supplemental petition which had already been filed in No. 1168.

It appeared in the original case that the gathering charges there assailed as unreasonable had been approved by the railroad commission of the state of Florida, but nothing appeared as to the circumstances under which that approval had been given. The

chairman of the commission stated upon the hearing of the present proceeding that these rates were established in 1902, that they were the result of negotiation and compromise between the railroads and the Florida railroad commission, that they were at that time fairly satisfactory to the commission, but that he and his associates were of the opinion that the volume of business had so increased since then that the rates then fixed should be reduced. This, and the alleged depressed state of the industry seem to have been the controlling reasons which induced the Florida commission to embark upon these proceedings.

The original case was heard in the spring of 1908 and was disposed of upon the basis of conditions then existing. This Commission states in its report that the rates in force had been approved by the Florida commission, and that circumstance may have somewhat influenced us in our approval of the gathering schedules at that time; but the opinion further stated that it was our duty, notwithstanding the approval of the state commission, to give these rates an independent examination, which was done at considerable length. We instituted a comparison between the rates themselves and other similar rates elsewhere existing; we inquired very fully into the conditions under which these fruits and vegetables were produced and marketed; we examined the financial condition of these railroads and the result of their operations in the state of Florida. From all this we concluded that while these gathering rates were higher than would perhaps be reasonable upon railroads where the volume of business was greater and the net financial result more favorable, still they could not be deemed excessive in view of the circumstances under which the service was rendered.

This conclusion was reached less than three years ago. No material change has taken place since then so far as this record discloses which would lead to a different conclusion if the same subject were before us to-day. The volume of business transacted has increased, but the expenses of operation have also increased to an extent which offsets the greater amount of business. It may be true that the condition of the various industries served is, on the whole, somewhat less flourishing to-day than then, but even if this were clearly shown we would not for that reason alone feel that these rates should be reduced. As has been frequently said in cases of this kind, we can not undertake to establish freight rates which will insure the production of these fruits and vegetables at a profit. Too much depends upon the state of the crop and the market. These rates can not be varied from year to year with the fluctuating condition of these industries. A reasonable rate should be established and continued so that both the shipper and the railway may know what to depend

upon. There is nothing in this record which would call for a reconsideration of our former conclusion if exactly the same question were now before us.

There is, however, a material difference in one respect between now and then. When we decided the original case, rates up to the gathering point were in all cases any quantity and in most instances this was also true from the base point to destination. In our first order in No. 1168 we established carload rates upon citrus fruits and pineapples from base points to destination which were lower than less-than-carload rates and we suggested that carload rates be also established from base points on vegetables. This suggestion was not accepted by the carriers, and as a result supplemental proceedings were brought asking the Commission to order the establishment of carload rates upon vegetables, which was done. *Florida Fruit & Vegetable Shippers' Protective Asso.* v. *A. C. L. R. R. Co.*, 17 I. C. C. Rep., 552.

There are, therefore, in effect to-day by the order of this Commission carload rates upon both fruits and vegetables from base points. No carload rates, or at least none which need be mentioned, are in effect up to the base point upon the Atlantic Coast Line and the Seaboard Air Line. None were in effect upon the Florida East Coast until our order established such rates upon pineapples. Since then that company has filed carload and less-than-carload rates upon citrus fruits and vegetables, but these rates are higher than those named by us for pineapples.

It appeared in the original case that citrus fruits to some extent, and vegetables to a much greater extent, were shipped in small lots to Jacksonville and there reloaded for movement beyond. It was our impression in establishing carload rates from the base point that this would permit the movement in small lots up to the base point and the consolidation at such point, and that the carload movement would in fact be mainly beyond the base point. Such has not been the result. In order to obtain the carload rate beyond the base point it seems to be necessary for the shipper, in actual practice, to present a full carload at the point of origin, and from this it follows that the movement up to the base point at the present time is entirely different from what it was when we approved these any-quantity rates. At that time the loading was by the carrier; now it is mainly by the shipper. The loading of the cars from the point of origin to the base points is much heavier now than formerly. In 1907 the average loading of citrus fruits and pineapples upon the Atlantic Coast Line up to the base point was 215 boxes. In 1910 this loading had increased to 279 boxes. In case of vegetables the increase is even more marked. The number of cars now required to transport the same

amount of this traffic from points of origin to base points would be materially less than in 1908. Otherwise stated, it costs the shipper more to handle his business to-day and it costs the railroad less.

It should be still further borne in mind that from points upon the Seaboard Air Line and Atlantic Coast Line there are to-day through carload rates which exceed the carload rate established by the Commission from the base point by the amount of the any-quantity rate up to the base point approved by us formerly. It would seem to be evident that under the circumstances and upon the basis of our former holding carload rates should be established to-day up to the base point which are less than the any-quantity rates formerly approved and that the through carload rates from originating points upon the Atlantic Coast Line and the Seaboard Air Line should be constructed by adding to our rate from the base point, not an any-quantity rate, but a proper carload rate from the point of production up to the base point.

It is evident that this might be arrived at in two ways: We might establish carload rates less by a certain amount per box and per crate than the present any-quantity rates, or we might apply to all fruits and vegetables a distance tariff like that imposed in case of pineapples upon the Florida East Coast Railway.

The present any-quantity rates upon the Atlantic Coast Line and the Seaboard Air Line are not constructed exactly upon a distance scale, although they are approximately. It was said upon the hearing that the rates of these two carriers so interlaced with each other that to apply a distance tariff in all cases would be to force upon them rates in some instances unduly low. But the effect of such a scale of rates would be to apply from each locality by the short line whatever rate its distance from the base point gave it; and while we ought to consider the general effect upon the revenues of these carriers of the establishment of a uniform distance scale, the mere fact that some particular rate would be somewhat advanced or reduced in comparison with other rates is no valid objection to that course.

It was said that the present rates had been agreed upon by the railroads and the Florida commission in view of these competitive conditions and that the relation of rates was satisfactory. It is also true that upon this hearing no particular locality was complaining of its rates as compared with other localities; but since the conclusion of the hearing the Commission has received in several instances petitions from different points of production insisting that the rates from those points were too high as compared with other points, and the proposed schedules of the Florida commission suggest a much greater reduction from present rates at more distant than at near-by points.

The movement of these fruits and vegetables is continuous from the point of origin to destination and the distance is very considerable, being 1,000 miles and over. Ordinarily in such cases comparatively

slight differences in distance between originating points are not reflected in the rate. Here, however, the rate rapidly increases as the point of production is removed from the base point, and this presents an anomaly in rate making which perhaps calls for explanation.

As already appears from the previous reports in this case these Florida lines up to what are known as base points were originally constructed and at first operated as independent railroads. The rates fixed by these lines were substantially the local rates from producing points to Jacksonville, from whence traffic could be handled north by either rail or water to the markets upon the north Atlantic coast, and increased with the distance as local rates for hauls of that length properly might. As time went on the Florida lines were merged with lines north of the base points, and extensive markets were opened in the middle west which were reached through the Ohio River gateways, so that the service was in all its elements through transportation, but the rates still continued to be made and published by naming the gathering charge up to the base point and a delivering charge beyond.

Citrus fruits apparently come into the market at about the same time from both the northern and southern sections of Florida, and the higher charge from the more southern section is therefore a disadvantage to the south as compared with the north, but, on the other hand, climatic conditions render production in the south less hazardous than in the north. In case of vegetables the higher transportation charge from the south is more than compensated by the fact that vegetables grown in southern Florida come into bearing earlier than those grown farther north, and have therefore to an extent an exclusive and a better market.

Growers were asked whether in their opinion points of production in Florida should be blanketed or thrown into wide groups in analogy to the practice generally followed. Those in the north naturally objected, since this would involve an advance in their rates; those in the south would be glad of a lower transportation charge, but were of the opinion that under all the circumstances this would hardly be just. We share this opinion. Considering the manner in which these rates have been established and maintained in the past, remembering that the industry has developed and that land values have become fixed upon the present rate basis, it would in our opinion be wrong and uncalled for to revise these rates upon a group adjustment. Present rates are established in the main upon a distance scale, and we think any reduction of those rates should be upon the same basis.

A statement has been prepared showing with respect to every point in Florida upon the Atlantic Coast Line and the Seaboard Air Line the difference between the present any-quantity rate on citrus fruits

and pineapples, and the rate which would result from establishing upon these lines the scale prescribed by this Commission for the transportation of pineapples upon the Florida East Coast Railway. An examination of that statement shows that to apply such pineapple scale to the transportation of pineapples and citrus fruits upon the Atlantic Coast Line and the Seaboard Air Line railways would result, in the main, in carload rates somewhat lower than the present any-quantity rates, but that such reduction would not exceed what should fairly be made in view of the carload movement.

A careful consideration of the whole situation leads us to the conclusion that the distance scale established for pineapples upon the Florida East Coast Railway would be just and reasonable for the transportation of citrus fruits and pineapples to the base point upon the railroads of the Atlantic Coast Line and the Seaboard Air Line in the state of Florida.

The complainants contend that the same rate per 100 pounds should be applied to vegetables. The standard box of oranges weighs 80 pounds, the standard crate of vegetables 50 pounds, and the claim therefore is that five-eighths of the rate fixed per box of citrus fruits should be applied per crate of vegetables.

Vegetables are usually a more perishable commodity than citrus fruits or pineapples and require greater expedition and care in the handling. The loading of vegetables is also lighter. The minimum fixed by us for citrus fruits was 24,000 pounds, while that for vegetables under ventilation was 21,000 pounds; under refrigeration, 17,500 pounds.

In fixing carload rates upon vegetables from base points to northern destinations we made the rate under refrigeration about 20 per cent higher than when under ventilation.

Taking everything into consideration we are of the opinion that the vegetable rate in carloads should be per crate approximately 70 per cent of the orange carload rate per box when under ventilation and 80 per cent under refrigeration. The less-than-carload rate may exceed the ventilated carload rate by 2 cents per standard crate, up to distances of 100 miles, beyond that by 3 cents.

It is earnestly contended in behalf of the Florida East Coast Railway Company that to apply these rates to that line would be confiscatory, and considerable testimony has been introduced and much discussion had upon both sides touching the financial condition of that company.

The Florida East Coast Railway extends upon the mainland down the east side of the state from Jacksonville as far as Miami, which was originally its terminus. From thence it has since been extended, crossing from the mainland to the Florida keys and running

from key to key south. The present southern terminus is at Knights Key, but the road is nearly completed to Key West.

The construction south of Miami has been in many places very expensive, so that the total cost of that portion nearly equals that of the line from Miami to Jacksonville. At the present time but little traffic originates south of Miami, and the complainants contend that this division is operated at an actual loss. Hence, they urge, the cost of constructing this portion of the road which is of no benefit whatever to shippers from Miami and north ought not to be included in determining whether a given schedule of rates will yield a fair return upon the property. So computing, they insist that the present rates are too high and that those asked for by them will be ample.

Upon the other hand, the Florida East Coast Company insists that the entire cost of its property should be taken into account, but further claims that even if only the value of the property from Miami north is considered, still the proposed rates are confiscatory.

The financial condition of the Florida East Coast Railway has been referred to at considerable length in our previous opinions in No. 1168, and it would not be profitable to discuss that subject further here.

Taking that into account together with all the other facts and circumstances bearing upon the matter we are of the opinion that the rates suggested for the Seaboard Air Line and the Atlantic Coast Line in the state of Florida would be just and reasonable to apply upon the railroad of the Florida East Coast Railway Company. Those rates are already in effect upon pineapples and do not involve any extraordinary reductions from the rates on vegetables and citrus fruits which that company has voluntarily established.

These distance tariffs should in all cases apply to Jacksonville alone. The traffic originating upon the Florida East Coast of necessity moves through that point, and this is therefore the only base point with reference to which the rates of that company have been established or published. Jacksonville is also the only base point which has been named in the tariffs of the Seaboard Air Line. The Atlantic Coast Line moves portions of its traffic through Gainesville and High Springs, and for convenience in operation formerly stated its gathering rates in certain cases to those points as well as to Jacksonville, but the rate itself was in all cases determined by the distance from Jacksonville.

It has been noted already that the present tariffs of all these carriers state a single rate from the point of origin to final destination, thus omitting all reference to any base point. The only effect of our order directing the maintenance of certain rates to the base point is to reduce by a corresponding amount this through rate, and to require the construction of these new carload and less-than-carload tariffs

upon other base points than Jacksonville would result in reductions upon all these lines greater than those contemplated.

While carriers will be directed to establish these new gathering charges from points of production up to Jacksonville, when for beyond, they may, if they so elect, in lieu of publishing such gathering rates, establish through rates from the points of production provided those rates do not exceed the sum of the rates to and from the base point established by the Commission.

We are then of the opinion that those rates upon pineapples, citrus fruits, and vegetables which would result from the application of the distance tariff given below upon the lines of the Florida East Coast Railway Company, the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railway from points in Florida up to Jacksonville, when for beyond, would be just and reasonable, that they ought not to be exceeded for the future, and that the present rates of those carriers are unjust and unreasonable to the extent that they exceed such rates.

These rates are stated in cents per standard box of 80 pounds in case of pineapples and citrus fruits, and per standard crate of 50 pounds in case of vegetables. The carload minimum is 24,000 pounds for pineapples and citrus fruits, 21,000 pounds for vegetables under ventilation, and 17,500 pounds for vegetables under refrigeration. Vegetables are sometimes shipped in other packages than standard crates, but we shall rely upon carriers to make a corresponding adjustment in such cases without attempting to name those packages and rates here.

Rates in cents per 100 pounds.

Distance (miles).	Pineapples and citrus fruits.		Vegetables.		
			Under refrigeration.	Under ventilation.	
	C. L.	L. C. L.	C. L.	C. L.	L. C. L.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Up to 40	9	12	7	6	8
Over 40 and up to 60	10	13	8	7	9
Over 60 and up to 80	11	14	9	8	10
Over 80 and up to 100	12	15	10	8½	10½
Over 100 and up to 120	13	16	10½	9	12
Over 120 and up to 140	14	17	11	10	13
Over 140 and up to 160	15	18	12	11	14
Over 160 and up to 180	16	19	13	11½	14½
Over 180 and up to 200	17	20	14	12	15
Over 200 and up to 220	18	21	14½	13	16
Over 220 and up to 240	19	22	15	13½	16½
Over 240 and up to 260	20	23	16	14	17
Over 260 and up to 280	21	24	17	15	18
Over 280 and up to 300	22	25	18	15½	18½
Over 300 and up to 320	23	26	18½	16	19
Over 320 and up to 340	24	27	19	17	20
Over 340 and up to 360	25	28	20	18	21
Over 360 and up to 380	26	29	21	18½	21½
Over 380 and up to 400	27	30	22	19	22
Over 400 and up to 420	28	31	22½	20	23
Over 420 and up to 440	29	32	23	20½	23½
Over 440 and up to 460	30	33	24	21	24
Over 460 and up to 480	31	34	25	22	25
Over 480 and up to 500	32	35	25½	22½	25½

APPENDIX II.

United States Commerce Court.

No. 58.—June Session, 1912.

Florida East Coast Railway Company, petitioner,

v.

United States, respondent; Interstate Commerce Commission, Railroad Commissioners of Florida, Florida Fruit & Vegetable Shippers' Protective Association et al., interveners.

ON MOTION TO STRIKE OUT EVIDENCE AND ON FINAL HEARING.

(For opinion of Interstate Commerce Commission, see 22 I. C. C. Rep., 11.)

Mr. Winfred T. Denison, Assistant Attorney General, with whom *Mr. Thurlow M. Gordon,* special assistant to the Attorney General, was on the brief, in support of the motion to strike out evidence.

Mr. Alexander St. Clair-Abrams and *Mr. Fred C. Bryan,* for the petitioners.

Mr. Blackburn Esterline, special assistant to the Attorney General, with whom *Mr. Winfred T. Denison,* Assistant Attorney General, was on the brief, for the United States.

65573—12—1

Mr. Charles W. Needham for the Interstate Commerce Commission.

Mr. F. M. Hudson for the Railroad Commissioners of Florida.

Mr. A. A. Boggs for the Intervening shippers.

Before KNAPP, Presiding Judge, and HUNT, CARLAND, and MACK, Judges.

(November 13, 1912.)

MACK, Judge:

This suit was brought to set aside an order of the Interstate Commerce Commission, entered November 6th, 1911, in two cases heard and considered together, Commission's Nos. 1168 and 3808, in so far as the Florida East Coast Railway Company is thereby affected. The other railroad companies have complied with the order of the Commission.

The original complaint in case No. 1168, filed in 1907, involved the rates upon fruits and vegetables from producing points in Florida to consuming markets in all parts of the United States east of the Rocky Mountains. Those rates were considered at the first hearing under two divisions, viz: (1) A gathering charge from the points of origin in Florida to what were known as Florida base points, of which Jacksonville was the principal one, when destined to interstate points; and (2) rates from such base points to points of final destination in other States. The sum of the two rates constituted the through charge.

On June 25, 1908 (14 I. C. C. Rep., 476), the Commission held that at that time the rates on

citrus fruits and pineapples from the base points to certain points of destination named in the order were unreasonable, and fixed reasonable rates, establishing carload and less-than-carload all-rail rates to eastern points, to which theretofore only any-quantity rates had prevailed, reducing the rates for carload shipments much below the any-quantity rates, and making the less-than-carload rates ten cents per crate higher than the carload, with the proviso that they should not, however, exceed to any point the then any-quantity rate to such point. The Commission declined to order in carload and less-than-carload rates on vegetables to these points, although it suggested to the railroads that they consider the advisability of doing so.

It refused to condemn as unreasonable the any-quantity gathering rates from points of production to the base points. In justification of this refusal the Commission said:

"From an examination of the elaborate figures which were introduced upon the trial showing the character of the traffic handled by these Florida roads, the conditions under which it is handled, their earnings, and the cost of operation running through a series of years, it is difficult to see how these railroads can be expected to transport in a suitable way this fruit and vegetable traffic from points of production to these basing points for a less sum than they now receive. It is difficult to see how, even upon the present tariff, those lines can in the immediate future expect to pay any considerable return upon their investment. We

feel that these local rates, although they are high in comparison with other local rates, are as low as should be established under all the circumstances."

The carriers complied with the order of the Commission, in so far as definite rates were fixed, but did not accept the suggestions which were made in the report.

Subsequently a complaint was filed with the Commission to obtain the benefit of the suggestions of the Commission in the former case and to secure the establishment of rates on fruits and vegetables from Florida base points to those portions of the United States not embraced in the previous order. As No. 1168 had been retained for further proceedings, and as shippers on the Florida East Coast Line complained of the rates on pineapples, citrus fruits, and vegetables, this case was again set down for hearing with No. 2566, and it was stated by the Commission that the previous record in No. 1168 should be treated as a part of the record in No. 2566.

The order in No. 2566 affected and changed the rates on citrus fruits, pineapples, and vegetables, including carload and less-than-carload rates, from Jacksonville, Florida, and other Florida base points to points particularly named in other States.

The order against the Florida East Coast Railway, in No. 1168, entered February 8, 1910 (17 I. C. C. Rep., 552), found the existing any-quantity rates on pineapples unreasonable from points on the Florida East Coast Railway to Jacksonville, Florida, when applied to interstate traffic, and fixed

certain maximum rates for the transportation of pineapples in carload and less-than-carload quantities. In support of this order the Commission said in its report:

"The growers of pineapples suggest that we might properly establish a lower rate on pineapples than upon oranges. All the incidents of the transportation are the same; the value of the two commodities is practically the same. The only reason put forward for a lower rate upon pineapples is that the condition of the industry demands it; but testimony already taken in this case shows that in the past the condition of the orange industry in Florida has been and now is critical, and if we were to adopt the theory urged upon us by the growers of pineapples it is almost certain that we should be met by the same argument, with equal force, in case of other citrus fruits and vegetables in Florida and elsewhere. We repeat that the freight rate can not be established upon that basis.

* * * * *

"The evidence produced upon the present hearing suggests no change in what was said (in the former report) so far as that applies to the Florida East Coast Railway. * * *

"While, however, we adhere to what was said in the previous case, we do think, upon more careful examination, that these rates of the Florida East Coast Railway on pineapples ought to be somewhat revised. They are not consistent with one another, and in our opinion those from the more distant points are too high as compared with rates from nearby points.

"The present rates are in any quantity. About 60 per cent of these pineapples move from the point of origin in carloads, 40 per cent in less than carloads. Carload shipments are stripped and loaded by the shipper and are not unloaded at Jacksonville, which probably saves the carrier not far from 2 cents per box. The less-than-carload shipment is loaded by the railway and usually unloaded at the station in South Jacksonville or Jacksonville. In our opinion carload rates should be established which are less than the present any-quantity rates by 3 cents per box.

"The establishment of such carload rates will not of a certainty work a decrease in the net earnings of the carriers. It is a false theory of transportation which seeks to force the shipper to avail himself of a less-than-carload service, which is more expensive to render, for the purpose of increasing the gross revenues of the carrier. The true object should be to perform the service in the most economical manner and to charge for that service reasonable compensation. In the end this makes to the advantage of both the carrier and its patron. The vice president of the Florida East Coast Railway stated that he had always thought that carload rates should be established and that, in his opinion to establish carload rates 3 cents per box less than the present any-quantity rates would not prejudice the net revenues of his company, since he would make up by saving in operating expenses what he lost in gross income."

The orders of February 8, 1910, were complied with. Thereafter and effective July 15, 1910, the Florida East Coast Railway Company voluntarily

established in place of its any-quantity rates carload and less-than-carload rates on citrus fruits and vegetables from points of production to Jacksonville. The carload rates were, from most points, less than the former any-quantity rates; the less-than-carload rates were higher than the former any-quantity rates from points 230 miles or less south of Jacksonville and lower from points farther south, but both the carload and less-than-carload rates so established were considerably higher than the pineapple rates established under the order of February 8, 1910. While the new rates were approved by the Railroad Commission of Florida for intrastate traffic, they were considered by it to be too high as proportional rates on interstate traffic. Pursuant, therefore, to a Florida statute, the State commission, having on January 28, 1911, complained in case No. 3808 against the other railroads, intervened in case No. 1168.

At the hearing on these complaints each party complainant and defendant in cases Nos. 1168 and 3808 was present, testimony was taken and on November 6, 1911, the order now complained of was made. (22 I. C. C. Rep., 11.) This order deals exclusively with the rates on pineapples, citrus fruits, and vegetables from points on the railroads within the State of Florida to Jacksonville, Fla., when destined for points beyond in other States. It finds the existing rates unjust and unreasonable to the extent that they exceed the

maximum rates prescribed by the Commission in its order and prescribes distance rates upon carload and less-than-carload quantities of pineapples, citrus fruits, and vegetables, together with a minimum carload to be applied to each kind of traffic named, the rates so fixed to be maintained for a period of not less than two years from January 2, 1912.

By this order a slight increase was made in the pineapple rate from some points more than 320 miles south of Jacksonville; the rates per crate for citrus fruits, in both carload and less-than-carload lots, were reduced to the pineapple rates, and the rate for vegetables, which in crates weigh 62½ per cent of citrus fruits, was fixed at 70 per cent of the citrus-fruit rate. In the report on which this order was based the Commission says:

"The original case was heard in the spring of 1908 and was disposed of upon the basis of conditions then existing. This Commission states in its report that the rates in force had been approved by the Florida commission, and that circumstance may have somewhat influenced us in our approval of the gathering schedules at that time; * * * we concluded that while these gathering rates were higher than would perhaps be reasonable upon railroads where the volume of business was greater and the net financial result more favorable, still they could not be deemed excessive in view of the circumstances under which the service was rendered.

"This conclusion was reached less than three years ago. No material change has taken place

since then so far as this record discloses which would lead to a different conclusion if the same subject were before us to-day. * * * There is nothing in this record which would call for a reconsideration of our former conclusion if exactly the same question were now before us.

" There is, however, a material difference in one respect between now and then. When we decided the original case, rates up to the gathering point were in all cases any quantity and in most instances this was also true from the base point to destination.

* * * * *

" There are * * * in effect to-day by the order of this Commission carload rates upon both fruits and vegetables from base points. * * * Since then that company (the Florida East Coast Railway Company) has filed carload and less-than-carload rates upon citrus fruits and vegetables, but these rates are higher than those named by us for pineapples.

" It appeared in the original case that citrus fruits to some extent, and vegetables to a much greater extent, were shipped in small lots to Jacksonville and there reloaded for movement beyond. It was our impression in establishing carload rates from the base point that this would permit the movement in small lots up to the base point and the consolidation at such point, and that the carload movement would in fact be mainly beyond the base point. Such has not been the result. In order to obtain the carload rate beyond the base point it seems to be necessary for the shipper, in actual practice, to present a full carload at the point of origin, and from this it follows that the movement up to the

base point at the present time is entirely different from what it was when we approved these any-quantity rates. At that time the loading was by the carrier; now it is mainly by the shipper. The loading of the cars from the point of origin to the base points is much heavier now than formerly. * * * The number of cars now required to transport the same amount of this traffic from points of origin to base points would be materially less than in 1908. Otherwise stated, it costs the shipper more to handle his business to-day and it costs the railroad less.

* * * * *

"It is earnestly contended in behalf of the Florida East Coast Railway Company that to apply these rates to that line would be confiscatory, and considerable testimony has been introduced and much discussion had upon both sides touching the financial condition of that company.

* * * * *

"The financial condition of the Florida East Coast Railway has been referred to at considerable length in our previous opinions in No. 1168, and it would not be profitable to discuss that subject further here.

"Taking that into account together with all the other facts and circumstances bearing upon the matter we are of the opinion that the rates suggested for the Seaboard Air Line and the Atlantic Coast Line in the State of Florida would be just and reasonable to apply upon the railroad of the Florida East Coast Railway Company. Those rates are already in effect upon pineapples and do not involve any extraordinary reductions from the rates on vegetables and citrus fruits which that company has voluntarily established."

Petitioner seeks to set aside the order of the Commission on the following grounds:

First. That there was no evidence to support the conclusion that the rates voluntarily made by the company were unreasonable and therefore the Commission had no power to proceed further and to fix what it might deem reasonable rates.

Second. That the rates are confiscatory.

First. It can not be denied that the Commission, both at the last hearing and at the earlier hearing in the same case, had a great mass of evidence before it touching the many questions of cost and value of the properties, cost and value of the services rendered, the history of the road and of the development of the industries involved, the methods of transportation and numerous other matters relevant to the determination of the unreasonableness of existing rates and the fixing of reasonable rates for the future. It is unnecessary to detail the testimony. Clearly, there can be found therein substantial support for the conclusions reached even though the Commission, if it had given weight to other parts thereof, might have reached a different conclusion. This court, however, is not authorized to review the Commission's determination of disputed questions of fact, made after a full and fair hearing, on proper notice, unless its power has been exercised in an arbitrary or unreasonable manner or in violation of petitioner's constitutional rights.

If the opinion of the Commission that present rates are unreasonable is based upon substantial, though conflicting evidence, the power can not be said to have been exercised in an unreasonable manner, even in a case wherein this court, if it had been charged with the duty of making the finding from the whole evidence, would have held the rates reasonable.

It is, however, urged that the report shows conclusively, in the passages above cited, that the Commission could not have deemed and did not deem the former rates unreasonable, because it expressly states that if the "same subject" or "exactly the same question" that was considered in the original proceeding were then before it, it would again refuse to hold the rates unreasonable, and it is urged that the "same subject" and "exactly the same question" were again before the Commission, viz, the reasonableness of the rates from the producing points to the base points.

To adopt this argument would be to give a much too literal interpretation to the quoted phrases, and would require us to disregard the entire context. A consideration of the whole report clearly shows that the Commission intended thereby to state that if the situation and conditions in 1911 were the same as in 1908 it would adhere to its former views. It thereupon proceeds, however, to indicate that the situation as to citrus fruits and vegetables had changed since 1908, exactly as it had indicated in

1910, the change in the pineapple situation since 1908, thereby demonstrating that the question before it was not "exactly the same," but materially different from that submitted to it in 1908. The orders of 1908 and 1910, establishing carload and less-than-carload rates from base points in place of any-quantity rates, changed the transportation methods not only from but to the base points; and as the Commission points out, they caused a great increase in the carload movement to base points, involving large savings to the railroad and increased expense to the shippers in the handling of the goods. Moreover, on full consideration, the any-quantity pineapple rates had been found to be unreasonably high when applied to the transportation after carload and less-than-carload rates were established, and from the evidence then taken together with that taken on the last hearing, the Commission found, as it well might, that there was no substantial difference in the transportation conditions between pineapples and citrus fruits. While the voluntary act of the railroad in reducing its rates in July, 1910, would not of itself justify the Commission in reducing them still further and especially in making the less-than-carload rates lower than the former any-quantity rates, it was in effect an admission that the old any-quantity rates in force since 1902 would be unreasonable. Moreover, inasmuch as these new rates were put in after January 1, 1910, the burden was on the carrier

under section 15 of the act as amended June 18, 1910, to establish their reasonableness in so far as they exceeded the former rates.

If the change from any-quantity rates to carload and less-than-carload rates involved nothing more than a division of the existing business into two kinds, merely for bookkeeping purposes, a reduction not only of the carload but also of the less-than-carload rates might well be termed an arbitrary act. But, as the Commission points out, it involves much more than this. The effect of carload rates is ordinarily greatly to increase the carload business, both absolutely and relatively to the less than carload, to bring about heavier loading, to lighten the handling operations of the railroad, and thereby to reduce the operating expenses. The net revenues might remain the same so far as the mere effect of this change is concerned, for the reasons stated in the testimony of petitioner's vice president, as quoted above from the Commission's report on the pineapple rate. But even if the net revenues would be decreased about ten per cent, as petitioner contends, the Commission's action could not therefore be said to be unreasonable or arbitrary. And in this case it is to be noted that the railroad itself in its voluntary change had made many less-than-carload rates lower than the former any-quantity rates.

Considering the new rates, not in their effect on the general revenues of the company, but in relation to the cost of the service to the carrier, exclu-

sive of return on investment, the evidence is clear that they are not only greatly in excess of any out-of-pocket expense for this service, but that they give the carrier a considerable margin over the proportionate operating expense, as their contribution toward the return on the investment. In view of all the foregoing considerations, the Commission can not be charged with having exercised in an arbitrary or unreasonable manner its power of determining the reasonable rate, even if such a charge, presented in petitioner's argument and briefs, can fairly be said to have been made in the petition in this case.

Second. The basis for the contention that the order is confiscatory is the claim that the entire property has a present value in excess of the bonded indebtedness of $31,000,000 and the capital stock of $5,000,000; that the net revenues for the year ending June 30, 1911, were less than four per cent of this value; and that if the line, not from Homestead, but from Miami, north, be considered as the main line, the entire net revenues therefrom, after deducting that part thereof derived from passenger and freight traffic originating at or destined to points south of Miami, would yield but little over four per cent of its present value, whereas the legal rate of interest in Florida is eight per cent.

This claim is based on two assumptions: (*a*) that the main line ends at Miami and not at Homestead; (*b*) that the value of the company's entire property, including the so-called over-sea extension, and

not merely of the main line itself, must be considered in determining whether rates from points on the main line are confiscatory.

Without at this time considering under what circumstances, if any, the reduction of particular rates can be held to violate the constitutional rights of a carrier, because thereby the total revenues become inadequate, even though the particular reduced rates yield some contribution to the general net revenues over and above the pro rata cost of service, we are of the opinion that in the present case there can be no basis for a charge of confiscation, because neither of the assumptions above stated and upon which it is based is sound.

(*a*) Originally the road ended at Miami; later on, however, and before the act of 1905 in reference to the over-sea extension hereinafter referred to was adopted, it was extended to Homestead.

In its plant or construction account, the company itself, in its own bookkeeping, deals with the line from Miami to Homestead as part of the main line and not of the over-sea extension. The increased production in the territory between Miami and Homstead since 1908 demonstrates the wisdom of the construction of this branch as part of the main line, independently of the over-sea extension. We are clearly of the opinion that the main line must be considered as ending at Homestead. Without discussing the evidence in detail, we are further of the opinion that the net revenues on this main line are in excess of eight per cent on the present fair

value of the property, and not merely something over six per cent, as conceded by the petitioner.

No possible question of confiscation can arise under these circumstances, even if the effect of the order will be to reduce the gross, or even the net revenues, of the company for the next two years by the full amount of the difference in rates, amounting, as applied to the tonnage for the year ending June 30, 1911, to $131,000, and being about 3 per cent of the gross, and 10 per cent of the net operating revenue of the main line.

(*b*) Whatever the powers of the company may be under its amended charter, it was not until after the Legislature of Florida passed an act in May, 1905, entitled "An act to encourage and secure the construction of a line of railway from the mainland of Florida to Key West; to provide for a fair and equitable assessment of taxes of the corporation constructing it; and to grant right of way over the submerged and other lands belonging to the State, and over the waters of the State, and to authorize the filling of the submerged lands and to construct buildings, docks, and depots thereon," that the company, at a stockholders' meeting, decided to construct the over-sea extension.

The tremendous cost of the line from Homestead to Key West, over $175,000 a mile, the scarcity of population along the route, the natural impossibility of ever making much of the territory productive, either agriculturally or industrially, confirm

the recital in the act of 1905 that the purpose of the extension was to share in the traffic expected to pass through the Panama Canal, unless, indeed, this marvel of engineering skill was constructed as a monument to the man, who from the early days to the present was and is the sole owner of the petitioner's stock and to whose indomitable energy and supreme confidence in the future prospects of this section of the country the road primarily owes its construction. At the present time the operating expenses of this extension are naturally in excess of its revenues. Its entire gross revenues—freight and passenger—for the year ending June 30, 1911, were less than $100,000. The contention that the earnings of the main line on passengers who traveled over the extension is to be attributed to the extension, can not be sustained. There is no evidence that would justify this court in holding that the extension produced any considerable increase of travel on the main line or that most of the passengers to Cuba via Key West would not have gone to or via Miami or Homestead if the extension had not been built.

To what extent shippers on an original or main line should bear increased burdens due to the construction of additional or branch lines must depend upon the particular circumstances of each case. No general rule can be formulated. In our opinion, the Commission was fully justified in disregarding the value of this extension, and this court, in determining whether or not the order of the Commission

operates to confiscate petitioner's property, must likewise at this time and at this stage in the development of the business on the extension and on the main line, reach its conclusions irrespective of the value of the over-sea extension.

At the final hearing a motion was made on behalf of the United States to strike out all evidence which did not form a part of the proceedings and testimony before the Interstate Commerce Commission. In view, however, of the conclusions reached by us after a consideration of the entire evidence, it becomes unnecessary to pass upon this motion.

The preliminary injunction will therefore be vacated and the petition dismissed for want of equity, and it is so ordered.

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Supreme Court of the United States

OCTOBER TERM, 1912.

NO. 858

Florida East Coast Railway Co.
vs. Appellant.
The United States,
Respondent
Interstate Commerce Commission, et al.
Appellees.

On Appeal from the Commerce Court.

BRIEF OF APPELLANT.

This is an appeal from the judgment and decree of the United States Commerce Court entered November 14, 1912, dissolving a temporary injunction and dismissing a bill filed by the Appellant for injunction and relief.

STATEMENT OF THE CASE.

The Florida East Coast Railway Company is a corporation under the laws of the State of Florida, and its lines of railroad lie wholly within that State, extending from Jacksonville on the north to Key West on the south, a distance of 523 miles, that the distance from Jacksonville to Miami is 366 miles, from Miami to Homestead 28 miles, and from Homestead to Key West 128 miles.

The record shows that the Florida East Coast Railway originated in uniting three short lines; one from Jacksonville to St. Augustine; the second from St. Augustine to Palatka; and the third from Palatka to Daytona. Each of these short lines was a separate and independent corporation with separate and independent officers, and they do not appear to have been very profitable while thus separately managed and operated. Mr. H. M. Flagler purchased some of the stock of the road from Jacksonville to St. Augustine and also a considerable amount of the bonds on each of the three roads. In this way he acquired the three roads and charged on his books not what the roads themselves cost but what he paid for the stock and bonds. Subsequently he purchased the line from New Smyrna to Orange City Junction; also the line from Titusville to Enterprise; and the line from Jacksonville to Mayport, these three latter being branch lines to the main line.

The three short lines from Jacksonville to Daytona after they had been united and placed under one management and operation appear to have been very profitable. At that time the passenger rates were 5 cents per mile, and so high were the freight rates that the rate on a ton of fertilizer from Jacksonville to Daytona, a distance of 110 miles, was greater than the present rate on a ton of fertilizer from Jacksonville to Miami, a distance of 366 miles, or more than three times the distance.

No interest appears to have been paid on the bonds nor dividends on the stock, but the entire profits were expended in the betterment and improvement of the

line, as shown by the Plant Account. Subsequently against these profits thus used were charged five years' dividends on one million dollars of stock owned by Mr. Flagler and in bonds paid to Mr. Flagler. (See Plant Account, page 878 of record.)

After remaining some time operating with the terminus at Rockledge and developing the business the road was extended from Daytona to Titusville, where the terminus remained for some time so as to develop the business when it was extended still further South to Rockledge. Here it remained also for some time when it was extended to West Palm Beach. The business having developed sufficienty to warrant further extension, the work of extension was resumed to Miami, which place was then practically only a name.

Before reaching Miami, in compliance with the law of the State (Section 21 of the Act of 1887, afterwards Sec. 2246 of the Revised Statutes, and now Sec. 2810 of the General Statutes of Florida), the Board of Directors of the Company held a meeting and resolved to extend the road to the island of Key West. Under the Statute, a certificate of the proposed change in route was filed with the Secretary of State and entered of record and from that time the Company became vested with a charter to Key West. It is submitted, therefore, that it is perfectly clear and indisputable that in 1893 the Company contemplated and determined to build to the island of Key West, as the Record shows. The line of road from Rockledge to West Palm Beach being very sparsely populated and the line from West Palm Beach to Mi-

ami being almost uninhabited, the road remained at Miami for several years until there had been sufficient development to warrant further extension. Mr. Flagler constructed magnificent hotels at Palm Beach, thereby attracting thousands of tourists annually who would otherwise have never gone there.

The pineapple industry was started and developed until it assumed large proportions. Between West Palm Beach and Miami the vegetable industry was also enormously developed.

NO INCREASE OF RATES.

From the very start not a single increase of rates, either of freight or passengers, has ever been made on the Florida East Coast Railway. Beginning at a flat rate of 5 cents per mile for passengers it was reduced first to 4 cents, then to 3 cents per mile, with thousand mile tickets at 2½ cents per mile. As the business developed there was a reduction on the rates on freight so that every extension, instead of constituting a burden on so much of the road as had been previously built up, became the primary cause of a reduction of rates, both on passengers and freight. This appears conclusively from the record in this cause. There is not a single word in it which shows that the Florida East Coast Railway Company has ever added to freight or passenger rates as a result of any extension made on its line.

EXTENSION TO KEY WEST.

When the development at Miami warranted it, the work of construction to Key West begun. As the

record shows, necessarily, as each extension was put under construction, accounts were kept separately from the operating expenses of the balance of the line, which had been previously formally put in operation. Thus, when it extended from Daytona to Titusville the accounts of that construction were necessarily kept separately, and so on all the way to Miami. When the work of extension to Key West begun the extension was known as the Cutler extension and afterwards as the Homestead extension, and the accounts were kept separately. On arriving at Homestead the work was temporarily suspended for the purpose of definitely determining whether the line into Key West should be along the Keys or continue on the mainland to Cape Sable and then across over the narrow waters to Key West. This, of course, required months. In the latter part of 1904 the line to Homestead had been completed and put in regular operation. In 1905 so anxious were the people of Florida to have the road constructed to Key West that in that year the Legislature enacted a law declaring such desire and offering such inducements as the Constitution of the State would permit for the construction of this line. The only benefit that this Act conferred upon the Florida East Coast Railway Company was to settle all questions as to the right of purpresture over the waters between the Keys and also to settle the question of taxation. The law did not confer upon the Florida East Coast Railway Company a single chartered right which it did not previously possess, as it was exceedingly doubtful whether or not the State of Florida had any interest

over the submerged land beneath the ocean between the Keys, and the Government of the United States had already granted permission to construct the line over these waters.

About the time this law was passed the engineers had completed their surveys of both routes from Homestead, and it was found that the cost of building to Cape Sable and then across to Key West would be enormously greater than to build across the Bay of Biscayne, and over the Keys into Key West. It was, therefore, definitely determined to build via the Keys. To protect its rights both in regard to the question of purpresture and of taxation the Directors of the Florida East Coast Railway accepted the rights set forth in the Act of 1905. I especially call the attention of the Court (see Chapter 5595 of the Laws of Florida, approved May 3, 1905) not only to the title of the Act but to the prefatory averments.

AN IMOPSSIBLE TERMINUS.

It is further respectfully submitted that the Florida East Coast Railway Company never could have intended to make Homestead a terminus of its main line. An examination of the map will show that Homestead is a place several miles West of Bay of Biscayne, the line of road, however, running parallel with the Bay. As seen from the record, Homestead was simply a name located in the rocky pine woods with no possible connection with any other railroad. The Florida East Coast Railway being completed to Miami controlled all the traffic that could arise along the line to Homestead if the exten-

sion to that point had never been built. It would, therefore, have been a waste of money to have constructed from Miami to Homestead with no purpose or intention of going beyond. The testimony of Mr. Parrott conclusively shows that the line would never have been built South of Miami but for the purpose and intention declared by the Resolutions of the Board of Directors in 1893 to build to Key West. An examination of the map will show that Homestead was the dividing point to determine whether the road should be built from thence on the mainland to Cape Sable and then across the shallow waters of the Bay of Florida to Key West or should be built across the Bay of Biscayne and across the Keys to Key West. The testimony is absolutely undenied and uncontradicted that the work of extension from Miami was begun and prosecuted with the settled purpose of building to Key West. The fact that there was a suspension of the work after it reached Homestead was due solely to the causes already stated, as testified to by Mr. J. R. Parrott, President of the Company.

ORIGIN OF THE CASE.

The order of the Interstate Commerce Commission complained of in this cause was entered November 6, 1911, Florida Fruit and Vegetable Shippers' Protective Association vs. Atlantic Coast Line Railroad Company, *et al.*, 22 I. C. C. Rep., 11, and ordered a substantial reduction, effective January 2, 1912, in the rates charged by appellant for the transportation of citrus fruits and vegetables from the various

points of origin to Jacksonville when for shipment to points beyond the limits of the State of Florida, and established new carload and less than carload rates materially lower than the rates on said articles then in force on said railroad.

On the 26th day of December, 1911, the appellant filed its petition in the Commerce Court of the United States against the United States and the Interstate Commerce Commission praying that said order of the Interstate Commerce Commission, dated the 6th day of November, 1911, might be enjoined, set aside and annulled and further that a temporary injunction might issue enjoining or suspending said order and any and all proceedings thereunder pending a final determination of the suit.

An order was entered by one of the judges of the Commerce Court on the 30th day of December, 1911, granting a sixty-day suspension of said order of the Interstate Commerce Commission. Prior to the expiration of said sixty days, to-wit, on the 25th day of February, 1912, said Commerce Court after hearing granted a preliminary injunction as prayed for in the petition on the execution and approval of a bond in the sum of $100,000 conditioned to repay and refund to shippers on the Florida East Coast Railway the difference between the old rates charged and the new and lower rates fixed by the said order of November 6, 1911, of the Interstate Commerce Commission if the petitioner should fail to maintain its case. Said bond was duly approved and filed and is still in full force and effect. The Railroad Commissioners of Florida, the Florida Fruit and Vegetable Ship-

pers' Protective Association and the East Coast Fruit and Vegetable Growers' Association were granted leave to intervene and became parties to the case. Testimony was taken in St. Augustine, Florida, and at Washington, and the case was argued and submitted on the 26th day of June, 1912. Final decree was entered by the Commerce Court November 14, 1912, vacating the preliminary injunction and dismissing the cause.

The said petitioner and appellant on the 15th day of November, 1912, filed in the said Commerce Court its petition for appeal to the Supreme Court of the United States and Assignment of Errors, and an order was duly entered on said day by the Hon. Martin A. Knapp, Presiding Judge of said court, allowing said appeal and a transcript of the record of said cause in the Commerce Court was on the 27th day of November, 1912, duly docketed in the office of the Clerk of this Court.

The order of the Interstate Commerce Commission complained of in this cause was the outcome of a series of hearings covering several transportation questions involving numerous carriers and extending over a number of years. The original complaint, No. 1168, was filed by the Florida Fruit and Vegetable Shippers' Protective Association on the 3d day of July, 1907, against the Atlantic Coast Line, Seaboard Air Line, Southern Railway, Florida East Coast Railway and other carriers, thirty in all, including several of the main trunk lines, and charged that freight rates on citrus fruits and vegetables from Florida points were unreasonable in themselves

and unreasonable as compared with rates charged Florida competitors, that refrigeration charges were unreasonable and unjust, that no carload rates were furnished complainants from Florida points to Eastern markets on the Atlantic seaboard, and that rates from Florida to these points and to some points in the interior were unjust and unreasonable.

Testimony was taken in this case in Washington February 6, 1908, *et seq.*, and at Jacksonville, Florida, March 18 and 19, 1908. Only one shipper located on the lines of the Florida East Coast gave testimony at these hearings, and his evidence related solely to pineapples. Rates on pineapples are not now in issue. The case was submitted on argument May 11, 1908, and was decided June 25, 1908. See Florida Fruit and Vegetable Shippers' Protective Association vs. Atlantic Coast Line Rd., *et al.*, 14 I. C. C. Rep., 476. All-rail rates on oranges and pineapples from shipping points in Florida to Florida base points were found to be not unreasonable, but carload rates from the base points to the northeastern cities were found unreasonable and ordered reduced. The report of the Commission dealt entirely with rates from base points and the base point on the Florida East Coast is Jacksonville, its northern terminus, and the report and order of the Interstate Commerce Commission did not therefore affect appellant, as appears from the following quotations from the report:

ORANGES.

"Rates from Florida are made up as already seen of the local up to the base point, and the

through rate from the base point. The reasonableness of the local rate may first be considered. * * * These locals up to the base points are in all cases established by the Florida Commission. * * *

"From an examination of the elaborate figures, which were introduced upon the trial showing the character of the traffic handled by these Florida railroads, the conditions under which it is handled, their earnings, and the cost of operation running through a series of years, it is difficult to see how these railroads can be expected to transport in a suitable way this fruit and vegetable traffic from points of production to these basing points for a less sum than they now receive. It is difficult to see how, even upon the present tariff, those lines can in the immediate future expect to pay any considerable return upon their investment. We feel that these local rates, although they are high in comparison with other local rates, are as low as should be established under all the circumstances.

VEGETABLES.

"While these local rates are essentially part of the through charge and should be dealt with by this Commission as such, it is difficult to see how these Florida railroads can render a proper service upon a lower scale of rates than is now applied. It must be remembered that without the railroads this industry could not exist at all, and that to its satisfactory carrying on the character of the service is fully as important as the rate. It is better that these fruits and vegetables should reach the market on time, and in good condition, than that a few cents per box should be subtracted from the carrying charge.

> There was very little complaint as to the service; nor did the shippers who testified manifest any desire that these carriers should be required to accept less than reasonable compensation for that service. Our conclusion upon this branch of the case is that the present rates up to the base point, while high in comparison with similar rates in other localities, are as low as they ought to be under the conditions obtaining upon these Florida lines, so that here, as in the case of oranges, the real question arises upon the rate from the base point to the Northern market."

On June 8, 1909, the same complainant, the Florida Fruit and Vegetable Shippers' Protective Association, filed its petition, No. 2566, in the Interstate Commerce Commission against the same Florida carriers and other railroads, 200 in number, complaining, among other things, of the rates on citrus fruits and vegetables on appellant's line of railroad. Testimony was taken in Jacksonville, Florida, December 20 and 21, 1909. Under date of January 12, 1910, the Interstate Commerce Commission rescinded its former decision in No. 1168 holding rates on fruits and vegetables from points on the Florida East Coast Railway to Jacksonville when for beyond to points in other States to be reasonable, ordered that the reasonableness of those rates be further considered and set the case down for final hearing on February 3, 1910, for the taking of additional testimony, having special reference to rates on pineapples, and for argument. But few pineapples are grown in Florida except on the line of the appellant. Complainant had urged that rates on pineapples

from Florida points should be reduced so as to permit the Florida growers and shippers to meet competition from Cuba. Appellant asked for reasonable time to procure the necessary evidence to show the conditions and cost of raising pineapples in Cuba, but the application was denied. No additional testimony was offered. Cases No. 1168 and 2566 were argued and submitted together, February 4, 1910, and decided by the Commission February 8, 1910. Florida Fruit and Vegetable Shippers' Protective Association vs. Atlantic Coast Line Rd. Co., *et al.* Same vs. Alabama & Vicksburg Ry. Co., *et al.*, 17 I. C. C. Rep., p. 552.

At the hearing in Jacksonville before Commissioner Prouty, in December, 1909, counsel for the shippers declared (p. 1184 of the testimony.)

> "In order to relieve anxiety, I will state that we are not at this time attacking the Florida East Coast rate up to Jacksonville under this petition. * * * * * The petition is confined to rates from the base points to points west."

Commissioner Prouty stated he did not understand the Florida East Coast rates were in issue (p. 1184), and again, that so far as citrus fruits were concerned they were then trying the carload rates from Florida base points to the Ohio River and points north and west thereof (p. 1184).

The first information appellant had that its rates were in controversy was a letter from Commissioner Prouty (Record p. 1186), dated January 13, 1910,

stating that upon the argument of the case the day before the Commission was strongly impressed with the critical condition of the pineapple industry and the disadvantage under which it labored in the matter of freight rates. So strong was this feeling, Mr. Prouty stated, that the Commission issued the order of January 12 above referred to in order to further consider the reasonableness of rates on fruits and vegetables on the Florida East Coast with special reference to pineapples.

Appellant protested against this arbitrary action because (1) it did not give sufficient time to meet the new issue, (2) that the extraordinary crop of 1908 was no fair test of the pineapple industry as was shown by the tremendous falling off of the crop in subsequent years, (3) because the supplemental petition did not raise any issue with appellant except the single one of handling carload shipments at South Jacksonville. No testimony was taken at the hearing ordered for February 3, 1910, because sufficient time was not given appellant to secure the evidence in Cuba necessary in order to make a proper comparison between the cost of raising pineapples in Florida and in Cuba.

The opinion of the Commission, after quoting the second paragraph of the opinion in the former case set forth above, goes on to say:

> "The evidence produced upon the present hearing suggests no change in what was said so far as that applies to the Florida East Coast Railway. That line operates at the present time

477 miles of main line and 106 miles of branches. It has a first mortgage of $10,000,000, a second mortgage of $20,000,000, and a capital stock of $3,000,000, making in all $33,000,000. The capitalization, with the exception of about $4,000,000 represents an actual cash investment.

"It is urged by the complainant that the portion of the line from Miami south, which has cost some $14,000,000, was not at the present time a paying investment and that the balance of the line, from Jacksonville to Miami, ought not to be taxed with the cost of this construction. Admitting this to be so and laying out of view altogether the $14,000,000, which have been invested in that part of the property, it is still true that during the entire existence of the Florida East Coast Railway, so far as this record shows, that property has never earned in any single year 6 per cent upon the money invested, with the single exception of the year 1909. During much of this time its net earnings have been but little above operating expenses. We certainly can not hold that these rates should be reduced because for a single twelve months, under what may be called abnormal conditions, this railway earned about 6 per cent on the money which has been actually invested in its construction. The years when no return has been received must certainly be given some consideration. Upon no other theory could private capital be induced to invest in the construction of railroads.

"While, however, we adhere to what was said in the previous case, we do think, upon more careful examination, that these rates of the Florida East Coast Railway on pineapples ought to be somewhat revised. They are not consist-

ent with one another, and in our opinion those from the more distant points are too high as compared with rates from nearby points.

"The present rates are in any quantity. * * * In our opinion carload rates should be established, which are less than the present any-quantity rates by 3 cents per box.

"The establishment of such carload rates will not of a certainty work a decrease in the net earnings of the carriers. It is a false theory of transportation which seeks to force the shipper to avail himself of a less-than-carload service, which is more expensive to render, for the purpose of increasing the gross revenues of the carrier. The true object should be to perform the service in the most economical manner and to charge for that service reasonable compensation. In the end this makes to the advantage of both the carrier and the patron. The Vice-President of the Florida East Coast Railway stated that he had always thought that carload rates should be established, and that in his opinion to establish carload rates 3 cents per box less than the present any-quantity rates would not prejudice the net revenues of his company, since he would make up by saving in operating expenses what he lost in gross revenue."

The order of the Commission in this case not only reduced appellant's rates on pineapples, but also on other citrus fruits. On the 4th day of April, 1910, appellant moved the Interstate Commerce Commission to rescind so much of the foregoing order as reduced its rates on citrus fruits, and the Commission on the same day in response to said motion en-

tered its order in said case, No. 1168, modifying its order of February 8, 1910, for the following reason:

> "Upon consideration of the record in the above entitled case, it appearing that the rates on oranges and other citrus fruits between the points involved were not specifically assailed in the complaint,"

struck out the words "and citrus fruits" in said order, the new order read,

> "for the purpose and with the intention of making said order apply only to the transportation of pineapples, as therein set forth."

Thereupon, on the 16th day of November, 1910, complainant filed in No. 1168, in the Interstate Commerce Commission, its supplemental petition attacking appellant's rates on citrus fruits and vegetables. On February 1, 1911, the Railroad Commissioners of the State of Florida filed their petition of intervention, asking that appellant be ordered to reduce its rates on citrus fruits and vegetables, and to put into effect rates on carload and less than carload lots for citrus fruits not in excess of the rates then in effect on pineapples, and to reduce the rates on vegetables when for beyond Jacksonville to an equitable proportion of those permitted for pineapples.

The Railroad Commissioners of Florida on the 28th day of January, 1911, filed a petition against the Seaboard Air Line, Docket No. 3808, and on the same day, a petition against the Atlantic Coast Line, Docket No. 3808, Sub. 1, asking for the establishment on these railroads of the same rates they had

asked to be fixed for the appellant. Testimony was taken in these three cases at Jacksonville, March 2, 1911. This was the first hearing at which appellant's rates on citrus fruits and vegetables were specifically attacked. The fact that appellant's rates on pineapples had been reduced, which reduction had been accepted by the appellant, seemed to be relied on by the complainant and the Railroad Commissioners of Florida as a conclusive argument why oranges should be carried for the same rate as pineapples, and that vegetables should be carried at a lower rate. Counsel for the shippers said (p. 1513 of that hearing) that the record as to vegetables was very voluminous and they merely expected to show at that time that the volume of business had largely increased and freight earnings had vastly increased, and on the crop then moving would increase more. Commissioner Prouty, who presided at the hearing, declared that the case would be decided on the old record, not on new testimony, but on the testimony taken in the old hearing (p. 1513, etc.); that the rates on citrus fruits and perhaps on vegetables would be revised on the strength of the decision already made on pineapples, and on the same record (p. 1513 and 1514); that he thought the Commission should probably establish carload rates, but he did not think it would revise the former holding as to the reasonableness of less than carload rates (pp. 1513 and 1514, 1557 and 1558). Counsel for the Railroad Commissioners of Florida confirmed this view, saying (p. 1570):

> "I understand the feeling of us all to be that we will submit this matter on the testimony al-

ready in these cases in regard to the carload rates, which have been discussed here. We do not at the present time desire to make a re-examination of the whole question such as was made here at the first hearing your Honor held in the city of Jacksonville."

The only new testimony of any importance offered at this hearing on behalf of the shippers was given by Mr. Burr, chairman of the Railroad Commissioners, who testified that it was estimated by shippers that 10,000 cars of tomatoes would be shipped from Dade County (the old county before Palm Beach County was created) in the season of 1911. As a matter of fact, shipments of all vegetables that season were less than 6,000 cars.

At this hearing Commissioner Prouty admitted that it cost appellant more to operate than it cost to operate the Seaboard Air Line and the Atlantic Coast Line, and for that reason appellant was entitled to charge a little higher rate. Notwithstanding this admission, the Commision, by its report and decision of November 6, 1911, ordered into effect on appellant's lines a reduction in rates which averaged 20 per cent on citrus fruits and vegetables and which were the same rates put into effect at the same time on the Seaboard Air Line and the Atlantic Coast Line. (See Florida Fruit and Vegetable Shippers' Protective Association vs. Atlantic Coast Line Rd. Co., *et al.*, 22 I. C. C. Rep., 11.)

The report of the Commission, comparing conditions when the order complained of was made with conditions as they existed when the first report was

made in 1908 when higher gathering rates were sustained, said:

> "No material change has taken place since then so far as this record discloses which would lead to a different conclusion if the same subject were before us today. The volume of business transacted has increased, but the expenses of operation have also increased to an extent which offsets the greater amount of business."

The commission reported (pp. 23 and 24) it found a material difference in one respect between 1911 and 1908, and that was in the movement up to the base point, that the carload movement had greatly increased, and the cars were loaded much heavier than formerly, thus reducing operating expenses. There was no evidence, however, that such changed conditions did prevail on appellant's line, though they apparently did obtain on the other two lines involved in the hearing. Neither were appellant's operating expenses thereby reduced.

Among the considerations affecting the hearing of the Commission appears the following (pp. 26 and 27):

> "It was said that the present rates had been agreed upon by the railroads and the Florida Commission, in view of these competitive conditions, and that the relation of rates was satisfactory. It is also true that upon this hearing no particular locality was complaining of its rate as compared with other localities; but since the conclusion of the hearing the Commission has received in several instances petitions from

different points of production insisting that the rates from these points were too high as compared with other points, and the proposed schedules of the Florida Commission suggest a much greater reduction from present rates and more distant than at nearby points."

ASSIGNMENTS OF ERROR.

We have endeavored to make the number of assignments of error as few as possible so as not to weary the Court with a longer brief than this must necessarily be.

FIRST ASSIGNMENT OF ERROR.

"The Court erred in holding that the Interstate Commerce Commission had the power to make and fix the rates complained of."

It is submitted that this assignment of error is well taken. The authority of the Interstate Commerce Commission in this respect cannot be arbitrarily exercised neither is it unlimited. This authority is and must be limited to enable it to be constitutionally exercised. If the authority is exercised in an unreasonable manner so as to deprive the appellant of due process of law, then we submit that this Court will not sustain the Interstate Commerce Commission or the Commerce Court in their holding. In fixing rates the Commission did not consider the entire business of the company, the present value of its property and reasonable net earnings, and we submit that the action of the Commission in deciding as it did deprived the appellant of due process of law, took its property without giving it due compensation

and literally confiscated $16,000,000 worth of this appellant's property. The bases of the present proceeding was the arbitrary reduction of the rate on pineapples, although at the hearing both counsel for complainants and the Commissioner presiding declared that the rates of this appellant were not in issue. At this hearing the appellant demanded that if there was to be any further reduction of rates it should be given an opportunity to show the present value of its property. Mr. Commissioner Prouty, who presided at the taking of the testimony held that the Commission could not use that basis at all in fixing rates. (See pp. 1566 and 1569 of the record). Time was demanded to ascertain the cost of production in Cuba as compared with the cost of production in Florida and this was refused; and the decision was based upon ex parte statements of the complainants without giving this appellant time to put in any testimony at all to meet this evidence.

To avoid conflict this arbitrarily reduced rate was put in effect, the record, however, showing that the pineapple growers insisted that they were entitled to a lower rate than was given on vegetables and citrus fruits because of the competition with Cuba in pineapples and because of the greater cost of producing the pineapple in Florida, while the average price per crate did not differ materially and was, in fact, frequently less than the average price per crate for oranges and vegetables. Because the rate on pineapples had been reduced the complainants before the Interstate Commerce Commission demanded a reduction of the rates on vegetables and oranges. At the

hearing Mr. Commissioner Prouty declined to take any new testimony, but held that the new petition should be decided on the testimony taken in the previous case. (p. 1513 of record).

In the decision itself the Commission stated that after the hearing (and without notice to the appellant) it received ex parte statements from parties which unquestionably affected its decision.

This Court has held that the substance and not the shadow determines the validity of the exercise of the power vested in the Commission. It has also held that the hearing which must precede an order taking property must not be a mere form, but one which gives the owner the right to secure and present material evidence.

> Oregon R. R. & Nav. Co. vs. Fairchild, 224 U. S., 510.

And the following cases are conclusive of the proposition here advanced:

> I. C. C. vs. Union Pac. R. R., 222 U. S., 541;
> I. C. C. vs. Ill. Central R. R., 215 U. S., 452;
> Southern Pac. R. R. vs. I. C. C., 219 U. S., 433.

In the case of Interstate Commerce Commission vs. Union Pacific R. R. Co., supra, this Court held that:

> "An order of the Commission, regular on its face, may be set aside if it appears that the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking

> property without due process of law; or if the Commission acted as arbitrarily and unjustly as to fix rates contrary to evidence or without evidence to support its conclusions; or if the authority was exercised in an absolutely unreasonable maner."

We submit here that, as admitted by the Court, the effect of the order complained of would be to reduce the revenues of the Company $131,000 per annum; that it was made upon the same testimony previously taken when the rate was higher than the one in force and which higher rate had been declared reasonable, the Interstate Commerce Commission holding that they did not see how the road could afford to haul the vegetables and citrus fruits at a lower rate than then charged. Effective July, 1910, the railroad company had voluntarily reduced the carload rates by an average of 4c per crate; and this order, without any testimony, further reduced the rates by an average of 4c more per crate, although the Interstate Commerce Commission in its decision held that the conditions were unchanged, while the evidence shows that they were changed, but only to the extent of making the situation less favorable to the railroad company than it was in 1908, since, while the gross receipts of the company had increased, its expenses had increased to a greater extent than the increase of business.

The determination of the pineapple rate was made without due process of law, and the decision in 1911 on the rates on fruit and vegetables was also made without due process of law. It had for its effect the

taking of the property of the company to the extent of $131,000 annually in violation of the Constitutional prohibition against taking property without due process of law. It was made arbitrarily and unjustly contrary to the evidence and without evidence to support its conclusion.

I. C. C. vs. Union Pac. R. R. Co., supra.

Due process of law requires that proper notice shall be given and that an opportunity to appear and to produce evidence be allowed.

The authorities on this point are so uniform and conclusive that we submit it requires no citations of authorities.

In this proceeding in 1911 the Interstate Commerce Commission, of its own accord, reopened the case of 1908 and declined to permit any additional testimony to be taken. The only thing in the nature of evidence that appears in this regard or that was received was the opinion of the chairman of the State Railroad Commission that the next winter crop would amount to 10,000 cars (see page 1519 of record); and the opinion of the Vice-President of the Florida East Coast Railway Company that it would not exceed 7,000 cars (see page..... of record). As a matter of fact, it was only 6,000 cars. If this was the "evidence" upon which the Commission reversed its former holding in 1908, then it is submitted that the Commission is not empowered to fix rates on this basis, but upon the actual business done or doing by a railroad. This would be the veriest speculation in

futures. Besides, the admission of the Commission in its decision that the condition of the road was the same in 1911 that it was in 1908 is conclusive that it was without evidence to support its conclusion that the rate should be still further reduced.

The following decisions of the Federal Courts sustain our contention on the Constitutional question here raised:

Chicago, Milwaukee & St. Paul Ry. Co. vs. Minnesota, 134 U. S., 418;

Milwaukee Electric Ry. & Light Co. vs. City of Milwaukee, 87 Fed., 577;

Central of Georgia Ry. Co. vs. Railroad Commissioners of Alabama, 161 Fed., 925;

Covington & Lexington Turnpike Road Co. vs. Sanford, 164 U. S., 578;

Dow vs. Biedelman, 125 U. S., 680;

Chicago & Grand Trunk Ry. vs. Wellman, 143 U. S., 339;

Reagan vs. Farmers Loan & Trust Co., 154 U. S., 362. (See page 399).

SECOND ASSIGNMENT OF ERROR.

"The Court erred in holding that said rates were not confiscatory."

In the decision of the Commerce Court it is admitted that the effect of the reduction applied to the tonnage of the year ending June 30, 1911, would be to reduce the revenues of the company by $131,000, being about 3% of the gross and 10% of the net operating revenues of the main line; which main line the

Court erroneously and arbitrarily decided terminates at Homestead in the pine wods. What is confiscation? Is it necessary that the appelant should, by reason of the rates, be forced to expend more in the operation of its road than it receives to constitute confiscation? Is it not protected by the Constitutional provision that it should receive fair compensation for the service rendered and that it should earn a fair profit on the present value of its property, as has been so repeatedly decided by this Court?

The only evidence before the Court was that it had earned $1,300,000 net revenue during the fiscal year ending June 30, 1911; that it had paid 4½% on its first mortgage bonds and 4% on its second mortgage, or income, bonds, leaving a surplus of $67,000, which included some $25,000 not earned in the operation of the road but from interest on its deposits of money. The only evidence before the Court was that the present value of the road exceeded $20,000,000 from Jacksonville to Homestead, without considering the extension to Key West at all, which would make the net earnings of the road but a trifle over 6% on the present value of the property to Homestead and giving to so much of the line as a gift all the increased business, especially in passengers, produced by the extension to Key West. A loss of $131,000 from this net income would reduce the net earnings on the present value of the porperty from Jacksonville to Homestead to but a little over 5%.

We shall describe under another assignment of error the method by which the learned Court below

fixed what it considered a present fair value of the line to Homestead. It is submitted, however, that the loss of this revenue reducing its earnings nearly 3% below the value placed on money by the laws of Florida is confiscation, and is a violation of the Constitutional provision that guarantees to this appellant fair compensation for services rendered. We contend further that a fair valuation of the entire line to Key West based upon the present value per mile of the line from Jacksonville to Homestead, with the branches, reduces the earnings of this appellant to less than 4%, or less than half the legal value of money as fixed by the laws of Florida. This we submit is confiscation.

Taking property without due process of law we submit is confiscation. Reducing rates without evidence to support the conclusion that they should be reduced, thereby inflicting a large loss of revenue upon a railroad, is also confiscation.

In the case of Spring Valley Water Work Co. vs. City of San Francisco, 124 Fed., 574, it was held that 4.4 per cent income on the value of that property was unreasonably low and confiscatory, and amounted to the taking of private property for public use without just compensation, thereby depriving the complainant of its property without due process of law.

And the same position was taken in the same case in 165 Fed., 657. And to the same effect Des Moines Water Co. vs. City of Des Moines, 192 Fed., 193.

This case is somewhat similar to the case of Smythe vs. Ames, 169 U. S., 466, where it was shown, as in this case, that there had been a de-

ficit for a number of years and that when the road commenced to earn something the rates were reduced, and this Court held to further reduce the rates was confiscatory.

THIRD ASSIGNMENT OF ERROR.

"The Court erred in holding that the main line of the petitioner's railroad ends at Homestead and that the net revenues on this alleged main line are in excess of eight per cent on the present fair value of the property."

In the consideration of this assignment, before discussing it, we call the attention of the Court to the decisions which hold that the policy or wisdom or necessity of the construction of the extension to Key West is not a subject of judicial review when the facts in this case are considered.

Florida Central & P. R. Co. vs. Bell, 43 Fla., 359;
Ulmer vs. Line Rock R. R. Co., 98 Me., 579;
Price vs. Pa. R. Co., 209 Pa., 81;
Boston, etc., vs. Bos. & W. R. R. Co., 40 Mass, p. 60.

It is submitted that the learned Court below was radically in error when it held that the act of the railroad company in deciding to extend the line to Key West was not determined until 1905. This is in conflict with the undisputed evidence:

(1) That the railroad company in 1893, by a formal act of its Board of Directors changed its route so as to build over Biscayne Bay to Key West.

At that time it had not completed constructing to Miami on the Bay of Biscayne.

(2) That it formally, in compliance with law, certified the action of the Board of Directors and filed its action with the Secretary of State.

(3) That at this time the ownership of the Panama Canal was not even settled.

(4) That it commenced the work of extension to Key West and had reached Homestead before the Act of the Legislature of 1905 was passed.

(5) That it had no part in and took no part in the Act of the Legislature of 1905, as shown by the testimony of Mr. J. R. Parrott. (Page 718 of record).

(6) That the Board of Trade of Jacksonville appointed a committee to urge action so as to settle the disputed question of the right of purpresture and the question of taxation.

(7) That the action of the Legislature of Florida placed the wisdom or unwisdom of the extension beyond judicial question.

At the risk of being prolix we quote the title of the Act and the prefatory declaration:

"An Act to Encourage and Secure the Construction of a Line of Railway from the Mainland of Florida to Key West; to Provide for a Fair and Equitable Assessment of Taxes of the Corporation Constructing It; and to Grant Right of Way Over the Submerged and Other Lands Belonging to the State, and Over the Waters of the

On page 6, by typographical mistake, the chapter is given as 3595 of the Laws of 1905. It should be chapter 5595. The body of the Act is as follows:

Be it Enacted by the Legislature of the State of Florida:

Section 1. That any existing railroad corporation in this State which shall, within three months after the passage of this Act, and its approval by the Governor, file in the office of the Secretary of State a plat showing a surveyed route and line of railroad definitely located and described, from the mainland of Florida to the Island of Key West, shall on complying with the other provisions of this Act, have the right to construct and operate a line of railroad from said mainland of Florida to the Island of Key West.

Sec. 2. That the corporation so filing the plat as set forth in the first section of this Act shall begin the actual work of construction within six months from the filing of the same, and shall have said railroad completed and in operation to Key West within seven years after the passage of this Act.

Sec. 3. That from the passage of this Act the assessment for taxes per mile of the entire line of road within the State of Florida of the corporation constructing said line of road from the mainland of Florida to the Island of Key West shall not be fixed at a greater sum per mile than the average assessment per mile of all other lines of railroad operated within the State of Florida.

Sec. 4. That the line of railroad from the mainland to the Island of Key West shall be held and considered for the purpose of assessment

of taxes the same as if it had been built on the mainland and at no greater expense.

Sec. 5. That the corporation so filing the plat as set forth in the first of this Act shall within three months after the filing of said plat, as set forth in Section 1, execute to the State of Florida a good and sufficient bond with sufficient sureties thereon, in the sum of twenty-five thousand dollars, conditioned for the letting of contracts and the employment of labor in the actual construction of the work of said road connecting the mainland of Florida with the Island of Key West within six months after the filing of the plat showing a surveyed route and line of railroad definitely located and described, the sum of money mentioned in the said bond to be forfeited to the State of Florida if the actual work of construction on said line of railroad from the mainland of Florida to Key West is not actually begun and prosecuted in good faith within six months from date of the passage of this Act and its approval by the Governor.

Sec. 6. That the corporation constructing said line of railroad from the mainland of Florida to the Island of Key West is hereby granted a right of way for the width of 200 feet on each side of the railroad over and through the land owned by the State of Florida on the line of its road and the right of way over the waters of the State two hundred feet on each side of the road bed, and shall have the right to fill in, occupy and use the submerged lands of the State on the line of its road for two hundred feet on each side of the line of road bed and to construct trestles, concrete arches and draw bridges over and on such submerged lands, build docks, warehouses, depots and other buildings over and on said sub-

merged lands, and hold and occupy, and use for its corporate purposes all lands made by filling in the submerged lands on its line of road and trestles over and through the waters connecting the mainland with the Island of Key West: Provided, That any corporation, firm, person or persons constructing any new line of railway as provided for in this Act or any previous Act, shall neither have nor claim from this State any land or grant of land for such extension or for any part thereof, from the mainland to the Island of Key West, except the 200 feet on each side of aforesaid railway, as provided in this Act.

Sec. 7. That all the laws or parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

Sec. 8. That the provisions of this Act shall take effect from and after its passage and approval by the Governor.

Approved May 3, 1905.

State, and to Authorize the Filling of the Submerged Lands, and to Construct Buildings, Docks and Depots Thereon.

"Whereas, The construction of the Panama Canal renders it desirable and important for the proper development of the State of Florida, and to secure the State a fair proportion of the traffic passing through the said canal, that a line of railroad should be constructed from the mainland of the State to the Island of Key West; and

"Whereas, To connect the mainland with the Island of Key West will require the construction of nearly one hundred and fifty miles of railroad, a large portion of which must necessarily be over rocky islands and through the waters of the State; and

"Whereas, It is estimated that the cost of properly constructing and equipping said line of railroad will aggregate many millions of dollars; and

"Whereas, It is desirable that said line of railway shall be constructed as speedily as possible, and that pledges shall be given by the State of Florida, that will encourage the investment of the capital needed for the construction of said great highway of traffic."

It is submitted also that there is no evidence upon which the Court could properly hold that the net revenues of the main line as fixed by the Court at Homeare in excess of 8% on the present fair value property. The evidence as to the present value e property was put in by the appellant. It emyed experts, engineers, railroad men, real estate

agents, building contractors, and others to visit every portion of the line from Jacksonville to Homestead and the branches to make an examination of the property, its buildings and equipment, and to give an estimate of the present cost of reproducing it. The testimony of these witnesses showed an aggregate present valuation of over twenty millions of dollars. Against this all that the appellees had to offer was the Plant Account showing not what it even originally cost to build the road but solely what the Plant Account showed Mr. Flagler had paid for the several properties now comprising the Florida East Coast Railway. It was shown that the price he paid was not what it cost to construct this road. For instance, the branch from Titusville to Enterprise was purchased for $74,900, which was less than the rails on it would have cost. (Page 338 of record). So likewise the line from New Smyrna to Orange City Junction, which was purchased for $100,000. (Page 337 of record).

The record shows that these lines cost to build them considerably more than Mr. Flagler paid for them. Again, the evidence also shows that the right of way and the lands used for building shops, yards, etc., has a present value of over three millions of dollars, while the Plant Account shows only an expenditure of only approximately $300,000 for these lands. A large part of these lands and right of way were given to Mr. Flagler and by him turned over to the road or donated directly to the road, but we clearly have a right to have their present value taken into consideration since to rebuild this road now w

would have to pay for every foot of ground. The buildings, equipment, ties and bridges were all shown to be in first class condition, approximately as good as new, as they necessarily must be for successful operation. The appellees admitted the fine condition of the road; they declined to put in one word of evidence conflicting with the testimony offered as to present value, but rest their claim solely upon the Plant Account, which did not and necessarily could not represent the present value for it was shown that the price of land had enormously increased in value since the construction of the road; that the cost of lumber, building material and ties had largely increased; that the cost of grading, cutting right of way and building trestles had enormously increased. It follows, therefore, that the only estimate of present value in evidence gives the value of the line from Jacksonville to Homestead, with branches, at over Twenty Millions of Dollars.

It was clearly error on the part of the learned Court below in its allegation that we had earned exceeding 8% on the present fair value.

It has been held by this Court that the reasonableness of rates to be charged by a public corporation should be based on the fair value of the property at the time of fixing the rates.

Smythe vs. Ames, 169 U. S., 524;
San Diego Land & Town Co. vs. Jasper, 189 U. S., 19;
Wilcox vs. Gas Co., 212 U. S., 19;
L. & N. R. R. Co. vs. Brown, 123 Fed., 946.

In the case of Pennsylvania Railroad Company vs. Philadelphia County (220 Pa. State, 115) 68 Atlantic Rep., 676, the decision which declared the two cent per mile rate established by the Legislature unconstitutional, said:

> "Public service corporations in Pennsylvania are entitled to look for a rate of return, if their property will earn it, not less than the legal rate of interest; and a system of charges that yields no more income than is fairly requisite to maintain the plant, pay fixed charges and operating expenses, provide a suitable sinking fund for the payment of debts, and pay a fair profit to the owners of the property cannot be said to be unreasonable."

On page 679 the Court further says:

> "What is a fair profit is a complicated and difficult question; but there are certain elements that are plainly to be regarded to avoid injustice, such as the original investment, the risks assumed at that time, the returns as compared with other enterprises as nearly similar as may be, the cost of maintenance and improvement, the prospects of increase, and the present value in view of the preceding elements. Injustice is done by anything that fails to consider these and to deal equitably with the private as well as the public interests involved. It is not necessarily regulated by what others would now make the venture for under the present circumstances and with present knowledge. The public having long reaped the incidental profits from the development of the country by

the enterprise and venture of capital in the increased value of land, the opening of new and wider markets for crops and manufactures, and the facility of intercourse and exchange for persons and property the courts should not now ignore the aspect of the subject in considering the question of injustice to the corporators. In view of the evidence before the Court and the proper elements with which it must be considered, the Court below certainly did not err against the appellant in finding that the statutory rates of fare would do injustice to the corporators."

"It only seeks revenue enough to pay interest on bonds, to pay operating expenses, and to pay taxes. Present rates, under the experience of 1894, were insufficient for such payment. The elements of the controversy will be stated as we proceed. It may, however, be premised here that Mr. Justice Brewer said in the Dey case: 'Compensation implies three things, payment of the cost of service, interest on bonds, and then some dividend;' 'adequate dividend,' subsequent cases say. These, then, are the factors of compensation to be applied."

The following decisions also hold the right of a railroad company to earn its operating expenses and fixed charges and a reasonable profit on the present value of its property:

Reagan vs. Farmers' Loan & Trust Co., 154 U. S., 402;

Lake Shore & M. S. R. Co. vs. Smith, 173 U. S., 684;

Minneapolis & St. L. R. R. Co. vs. Minne-

sota, 186 U. S., 257;
Consolidated Gas Co. vs. Mayer, 146 Fed., 150;
Chicago vs. Tompkins, 176 U. S., 167;
A. C. L. R. R. Co. vs. Florida, 203 U. S., 256;
Stanilaus County vs. Irrigating Co., 192 U. S., 201;
Southern Pac. R. R. Co. vs. Board of R. R. Com., 78 Fed., 236;
Milwaukee Electric Ry. & Light Co. vs. City of Milwaukee, 87 Fed., 577;
Chicago Union Traction Co. vs. State Board of Equalization, 114 Fed., 537;
Central of Ga. R. R. Co. vs. Railroad Commission of Alabama, 161 Fed., 925.

And the Interstate Commerce Commission itself has recognized the right of the railroad company to earn as a profit the interest named by the laws of the State at the value of money.

See also:

4 I. C. C. Rep., 560;
174 U. S., 739;
164 U. S., 578;
107 U. S., 691

The testimony in this case as to present value is as follows:

The estimated cost of rebuilding from Homestead to Jacksonville, with branches, made by Colonel Elliott and Major Huger in 1907, was $6,810,374,33 (see Exhibit 3, page 37 of Exhibits). Of this

sum $2,201,953.33 were for rails and fasteners, on which there has been no increase in price, the same amount being paid for steel rails and fasteners now as was then paid. This leaves $4,608,420.67 as the then estimated cost of reproducing the road. It was shown from the evidence:

(1) That the cost of grading had increased from 20c to 24c per cu. yd.

(2) The cost of trestles had increased from $6.01 to $8.50, or over 40 per cent. increase.

(3) The cost of trestle timbers had also increased from an estimated average by Colonel Elliott of $14.00 to from $22.00 to $25.00.

(4) The price of labor had increased from 25 per cent. to 40 per cent.

An analysis of the different amounts of material put in the road, the number of cross-ties, the number of cu. yds. of grading, show a present average increase in cost of construction of about 24 per cent., making an estimated increase in the cost of construction of $1,106,030.00 (as compared with 1905) which makes a total present cost of construction, including steel rails, etc., of $7,916,394.00. This is exclusive of equipment, buildings, machinery, tools and stock on hand, etc.

This represents the present cost of reconstruction of the road as it was in 1907 without the betterments and improvements put upon it since.

The present value of the property, therefore, would be as follows:

Present cost of construction of main line from Homestead to Jacksonville, and branches north of Miami as compared with 1907	$ 7,916,394.00
Betterments and improvements since July 1, 1907	1,502,126.00
Present value of lands	3,029,210.00
Present value of buildings in existence in 1907	1,287,963.00
Machinery and tools	113.061.00
Stock on hand	795,407.00
Present value of equipment	3,343,048.00
Cash capital, as per testimony of Mr. Parrott	700,000.00
Value of half interest in steamship line	500,000.00
Value of one-fourth interest in terminal property	450,000.00
Value of half interest in A. C. L. R. R. and F. E. C. Ry. freight terminal	400,000.00
Purchases of land since 1907	91,000.00
New buildings constructed since 1907	90,000.00
Total	$20,218,609.00

As will be shown in the argument on the seventh assignment, the Interstate Commerce Commission and the Commerce Court were compelled to include in their estimate of the earnings all the business brought to the balance of the road by the extension while depriving the extension of any benefit whatsoever except local traffic between Homestead and Knights Key or Key West. They refused even to

consider placing a valuation on the line from Homestead to Key West at the same average per mile as the value of the balance of the system regardless of the greatly increased cost of construction from Homestead to Key West; and this estimated valuation placing the whole line on the same basis would have increased the present value to about $26,500,000, or a fraction over 5% and less than 4% on the total shown investment of $35,000,000.

FOURTH ASSIGNMENT OF ERROR.

"The Court erred in holding that it was not until May, 1905, that the petitioner decided to construct its extension to Key West."

We confess to surprise at finding this in the decision as it utterly ignores several undenied and undisputed propositions:

(1) That in 1893 the Board of Directors, by formal action, decided to build from Miami to Key West.

(2) The testimony of Mr. Parrott, the President of the road, that when it commenced building from Miami southward it was with the purpose and intention of building to Key West.

(3) That the delay at Homestead, which was only for a few months, was to definitely determine which route should be taken to build into Key West, Homestead being the point from which the extension could continue on either route.

(4) That, but for the fixed and officially declared purpose to build to Key West the extension

to Homestead from Miami would never have been made.

(5) That, as the line of extension was completed, it was operated as part of the main line from Jacksonville and is still so operated.

Clearly and unmistakably it was an error of the Court below to have held that it was not until May, 1905, that the appellant decided to construct its extension to Key West.

Presumably the Commerce Court came to the conclusion that the determination to build to Key West was not arrived at until after the passage by the Legislature of the Act of 1905, but to do so it had to ignore the undenied testimony that the Company was already building to Key West; that the only purpose in accepting the Act of 1905 was not to determine to build to Key West, as that had been determined twelve years before, but to secure the benefits conferred by the Act in the matter of taxation and to settle the question of right to build over the waters between the keys.

It is submitted that the conclusion of the Commerce Court in this respect is not only not sustained by evidence, but is in conflict with the record evidence of the action of the Company in 1893 and the testimony of its President, Mr. Parrott.

FIFTH ASSIGNMENT OF ERROR.

"The Court erred in holding that the Interstate Commerce Commission was justified in disregarding the value of this extension in fixing the rates

complained of."

We have been unable in all our researches for months past to find a case in which even the judicial authority has ever been exercised in holding that in fixing rates one part of the main trunk of a railroad line could be ignored and only other parts considered. We have endeavored to show that this power could not be vested in a Court and clearly it could not have been vested in the Interstate Commerce Commission.

All the authorities we have been able to find are to the effect that no authority in law exists to single out part of a road, ignore it, and to fix rates based solely upon the earnings or cost of construction of the other part.

F. H. Peavey & Co. vs. Union Pacific R. Co., 176 Fed. Rep., 409;
Postal Tel. & Cable Co. vs. Adams, 155 U. S. 698;
Mo. K. & T. R. Co., *et al.*, vs. I. C. C., 164 Fed., Rep., 647.

And Mr. Commissioner Prouty, who presided at the taking of the testimony, himself admitted this. Counsel for appellant had insisted that before further reduction could be made the company should be afforded an opportunity to show what the present value of the property was. In the proceedings before the Interstate Commerce Commission the following colloquy occurred: (page 1566 of record).

Mr. Commissioner Prouty: That is one rea-

son we cannot use that basis at all.

Mr. St. Clair-Abrams: Exactly, therefore I say this Commission must consider the entire system—

Commissioner Prouty: *We must consider the entire system but at the same time we cannot assume that there is any traffic which justifies, up to the present time, the construction of that extension.*

Mr. St.Clair-Abrams: But will the commission not consider the enormous increase of business that extension has given to the main line, which amounts to $4.00 for every one that the extension itself gets?

Commissioner Prouty: We will try to fix the reasonable rate, and if you can make your extension pay you are entitled to the benefit of it. *If it does not pay the public ought not to be required to make good the loss.*

Mr. St. Clair-Abrams: But if the public on the main land is getting four or five dollars for every dollar earned on the extension, will the commission say they must get that benefit and we derive no benefit from the extension at all?

Commissioner Prouty: I say I do not think the Commission will undertake to settle the question which is before us on a revenue basis at all.

It will be noticed that Mr. Commissioner Prouty admitted that the Commission must consider the entire system, but proceeded judicially to assert a right to ignore the extension because, as appears from the showing of its expert, the local freight traffic from Homestead to Knights Key and afterwards to Key

West was not large.

It is submitted that the Commission was without power to do this and that the Commerce Court was equally without power to accept this as the basis of the appellant's business.

In another assignment we will show that the benefits conferred upon the main line from Jacksonville to Homestead were really enormously larger than we claimed, and that the record of evidence put before the Commerce Court and which we tried to put before the Interstate Commerce Commission, but were not permitted to do so, is conclusive of the great benefit conferred upon the balance of the main line by this extension.

The evidence is conclusive that the main line of the road is from Jacksonville to Key West. In both freight and passenger trains the same cars leaving Jacksonville run unbroken to Key West, the only difference being in the number of trains. For a few weeks in the winter, two and sometimes three trains are run from Miami to Key West; in the summer one train each way. On the balance of the main line from Jacksonville to Miami during the summer months two trains are run each way; during the winter months, five. The very fact that as many as three trains each way are needed from Miami to Key West is itself conclusive of the large amount of business that the extension to Key West furnishes; the passenger traffic from Miami to Homestead being trifling and inconsiderable.

It must not be forgotten that no trains are run

separately from Homestead to Key West or back. The only difference at Miami is that, to comply with the law regarding the hours of labor, a new train crew is put on each train at Miami and a fresh locomotive, just as is done at another point between Jacksonville and Miami.

SIXTH ASSIGNMENT OF ERROR.

"The Court erred in deciding that there was evidence before the Interstate Commerce Commission that the conditions existing in 1911 were any different from those existing in 1908 to warrant a further reduction of rates."

We have cited in the statement of the case the language of the Commission where they distinctly hold that the conditions were not different. We submit that this opinion of the learned Court below is directly in conflict with the decision rendered by the Interstate Commerce Commission itself in 1911. Referring to its decision in 1908, where it held that the then higher rates were reasonable and that the Commission could not see how the appellant could transport freight for less than it was doing, the Commission says:

"No material change has taken place since then, so far as this record discloses, which would lead to a different conclusion, if the same subject were before us to-day. The volume of business transacted has increased, but the expenses of operation have also increased to an extent which offsets the greater amount of business."

The appellant offered then to show to the Commission and was not permitted to do so, but did show to the Commerce Court, that, while the business of the road in the aggregate had increased since June 30, 1911, the expenses had increased to a greater extent than those receipts, and we may be permitted to add that during the fiscal year ending June 30, 1912, its net earnings had decreased to such an extent that, instead of being able to pay 4% on its second mortgage, or income, bonds, it could only pay 2½%.

As a matter of fact, as this record discloses, the condition in 1911, when the Interstate Commerce Commission rendered its decision, was less favorable to the appellant that it was in 1908. It was, therefore, error on the part of the learned Court below to hold that the conditions in 1911 were different from those existing in 1908, so as to warrant a further reduction in rates; and it seems largely upon this erroneous idea that the Commerce Court sustained the action of the Interstate Commerce Commission.

SEVENTH ASSIGNMENT OF ERROR.

"The Court erred in deciding that there was no evidence to justify it in holding that the extension produced any considerable increase of travel on the main line from Jacksonville to Homestead."

As this Court has held in the case of Interstate Commerce Commision vs. Union Pac. R. R. Co., 222 U. S., 541:

"An order of the Interstate Commerce Com-

> mission is not to be considered by itself alone, but must be considered in the light of all the testimony."

In the case of Interstate Commerce Commission vs. Chicago, Rock Island & Pac. R. R. Co., 218 U. S., 88, this Court sutsained the proposition that a railroad company may complain of an order of the Commission reducing rates so far as it affects its revenue.

An examination of the testimony in this case completely rebuts the idea that there were no benefits derived from the extension. The testimony for the appellant was that prior to the building of the extension from Miami to Knights Key the bulk of the passenger traffic to Cuba was via Tampa; that after the extension was completed and put in operation to Knights Key the business to Havana enormously increased, and at the time of the witness' testifying a large majority of the travel to Havana was via the Florida East Coast Railway and not by way of Tampa. It was also shown by the evidence before the Commerce Court that the completion of the line to Key West had resulted, up to the time of testifying, in a still larger increase of travel over the line of the Florida East Coast Railway. (See pages 734, 735 and 736, etc., of record). Witnesses for the appellant testified to the fact that there was very little local traffic from points on the Florida East Coast Railway, that there were few Cubans or Spaniards residing at Miami or anywhere else on the Florida East Coast Railway, and that over 90% of

those who travel on the extension south of Miami come from Jacksonville. Of course, it is impossible to prove that every person who went over the extension would not have traveled as far as Miami but for the extension, but the record of the enormous increase of passenger traffic after the completion of the extension to Knights Key for the fiscal year ending June 30, 1911, was $319,547.07; and an examination of the travel to Cuba and its increase shows it to be in equal proportion, thereby demonstrating, with as much certainty as it is possible to arrive at, that this extension caused this increase. It may almost be claimed that Court will take judicial cognizance of the widespread interest created throughout the entire world by this line of road. Since its completion to Knights Key it has every winter been the Mecca of tourists, not only from all parts of the United States, but from all parts of the world. The percentage in increase in passenger earnings has been greater than the percentage of increase of freight earnings. The increase of freight earnings for the fiscal year ending June 30, 1911, as shown by the record (page 1082 of record) over the freight earnings for the fiscal year ending June 30, 1909, was about 22%, while the increase of passenger earnings for the fiscal year ending June 30, 1911, over the passenger earnings for the fiscal year ending June 30, 1909, was nearly 30%; and it must be borne in mind that the bulk of the increase of freight was on the line of road from Miami to Homestead.

The entire business of the road from passenger and freight earnings increased in 1911, $721,153.26,

of which increase $554,055.83 was on the extension from Miami to Knights Key, and we insist that more than two-thirds of this increase was from the passenger traffic in winter over this extension, the business of the balance of the road increasing only $167,097.43. Perhaps no fact is more clearly shown in the testimony before the Commerce Court (see pages ..... of record) and no fact more notoriously obvious to every person familiar with the road than the extension of that road from Miami to Knights Key and Key West has attracted thousands of persons anually who had never been on the line of the road before, and the vast majority of whom would probably never have come to Florida in the winter but to travel over and see this novel railroad, and that this travel has steadily increased in volume every year. As shown by the record (pages ..... of record), before the road was constructed to Miami the winter travel to Nassau was by way of steamer from Jacksonville and from New York. This traffic was diverted to the Florida East Coast Railway when the road put a line of steamers on from Miami to Nassau, and the increase of this passenger traffic has been small. When the road ran a line of steamers from Miami to Havana it diverted only a small part of the travel which had formerly gone exclusively via Tampa, but, as shown by the testimony of Mr. Parrott (pages ..... of record), this travel was comparatively small; but when the line was completed to Knights Key the travel via the Florida East Coast Railway to Havana became enormously increased,

and this has been further increased since it was completed to Key West, although, when Mr. Parrott testified, the return business from Havana had not yet begun, the months of March and April being the greatest for travel (pages 734-5 of record).

During the entire fiscal year ended June 30, 1911, the Company handled between Knights Key and Havana, both ways, 15,095 passengers; up to January 22, 1912, there had been handled to and from Knights Key and Havana 4,694 passengers. On the 22d of January the line was opened to Key West, and from that time to the end of February 7,612 more passengers had been handled to and from Havana and Key West, or a total of 12,261 passengers, or only 2,834 passengers less than the entire year from Knights Key, and, as stated by Mr. Parrott (pages 734 and 735 of record), March was a better month than February, and up to the middle of April far better than February. We may not be permitted to state what the total traffic of the fiscal year ending June 30, 1912, over the extension to Key West and Havana and return amounted to, as it is not part of the record, but the increased passenger business shown up to the time of testifying and the enormous number of persons carried only one way to Havana conclusively shows the enormous benefits conferred upon the main line by the extension. Every passenger leaving Jacksonville has to pay $11.00 to Miami (see Parrott's testimony, page 752 of record), or something like $13.00 to Homestead.

We submit that the testimony was and is con-

clusive and that the holding of the learned Court below in this respect was erroneous.

Indeed, if we deduct the freight paid by the company itself for material transported for its own use over the balance of the line to the extension (some $98,000), the actual aggregate of freight business was less than $303,000. Deduct the pessenger fares paid by the railroad company for carrying employes over its road to the extension ($9,000) leaves the increase of passenger traffic $310,000, or $8,000 more than the increase of freight, something unusual, if not unprecedented, with a railroad company that transports both freight and passengers, and reducing the percentage of increase of freight to about 15%, while the percentage of increase from passenger fares would remain practically unchanged (nearly 30%). As a matter of fact, of the net earnings of $1,300,000 during the fiscal year ending June 30, 1911, $490,000 was furnished by the extension from Miami, as against $827,000 furnished by the balance of the line from Miami to Jacksonville and its branches.

EIGHTH ASSIGNMENT OF ERROR.

"The Court erred in deciding that the Interstate Commerce Commission had any evidence before it in 1911 to show any material increase in carload shipments or any material saving to the appellant (petitioner) as a result of the reduced rates on carload shipments from points of origin."

It is submitted to the Court that this holding of

the Commerce Court is absolutely without evidence to sustain it. On the contrary, the testimony of Mr. Kirtland shows that so far as the Florida East Coast Railway Company was concerned there had not been any material increase in carload shipments or any material saving to the appellant as a result of the reduced rates on carload shipments from points of origin. Mr. Kirtland testified (pages 422, etc., of record) showing that before the railroad company made the reduction and established carload rates there had been an increase in carload lots resulting from the shippers or growers selling f. o. b. in carload lots and gave the percentage of increase before there was any reduction of rates whatsoever. This increase was during the fiscal year ending June 30, 1910, and there is absolutely no evidence that the reduction of rates effective July 10, 1910, and which was in force when all the orange, pineapple, and vegetable crops were shipped during the fiscal year ending June 30, 1911, ever produced any increase in carload shipments. In many cases, even where a carload was shipped from the point of origin, it contained fruit or vegetables consigned to different persons in different States, and the company had, on arrival in South Jacksonville, to divide this freight and put it in proper and appropriate cars, but we submit there is not one word of evidence to show that there was any saving to the Florida East Coast Railway Company from the reduced carload rate made by it. The only result was the reduction of $81,000 from vegetables alone, the volume being about the same as the previous year. Here, again,

we submit that the Commission acted without evidence, but purely upon a theory and upon speculative opinions without any basis of fact.

It must not be forgotten that for years before the reduction to carload rates the tendency had been for an increase of the percentage of shipments from less than carload to carload rates, and, consequently, it cannot be justly claimed that the present increase was due to less than carload rates. (See Kirtland's testimony, page 456 of record).

NINTH ASSIGNMENT OF ERROR.

"The Court erred in deciding that the rates fixed by the petitioner put any increased burden on the shippers on the line from Jacksonville to Homestead."

In 1908, when the rates were for any quantity and were much higher, the Interstate Commerce Commission held that these higher rates were reasonable. Instead of putting any increase burden on the shippers on the line from Jacksonville to Homestead, in 1910 the appellant relieved these shippers on the line from Jacksonville to Homestead from burden by reducing the rates on all freights about 10%, and by reducing the rates on citrus fruits and vegetables an average of nearly 18%. Where the great mass of the vegetables were produced the reduction was very much greater. As a consequence, the rates fixed by the petitioner, effective July 10, 1910, instead of putting any increased burden on the shippers on the line from Jackson-

ville to Homestead, absolutely relieved them from the burden of rates which in 1908 the Interstate Commerce Commission had solemnly held were reasonable and just, although the condition of the road was not in 1910 or 1911 as good as it was in 1908. While the business had been increased, the necessary expenditures of the road had increased in a larger sum.

TENTH AND ELEVENTH ASSIGNMENTS OF ERROR.

TENTH ASSIGNMENT: "The Court erred in vacating the preliminary injunction and dismissing the petition."

ELEVENTH ASSIGNMENT: "The Court erred in not granting the relief prayed for in the petition."

These two assignments may be argued together. If the Commerce Court erred on any of the assignments herein made, then it certainly erred in vacating the preliminary injunction and dismissing the petition, and it follows, therefore, as a matter of course, that the Court erred in not granting the relief prayed for in the petition.

It is contended by the Appellees that, because the Seaboard Air Line Railway and the Atlantic Coast Line Railroad Company put the rates objected to in operation on their lines of road, that was a reason why the Florida East Coast Railway Company should do the same thing. We submit that this and other Courts have held that what may be a reason-

ably high or low rate on one road may be an unreasonably high or low rate on another.

All that is necessary to do is to refer this Court to the record showing the enormous difference between the business of the Florida East Coast Railway Company as compared with the Seaboard Air Line Railway and the Atlantic Coast Line Railroad Company. Both of these roads do a larger passenger business than the Florida East Coast Railway Company. In the matter of freights the comparison is grotesque:

COMPARISON OF FREIGHTS.

Perishable High-rate Freight	*Whole tons*
Florida East Coast Railway, fruits and vegetables	124,892
Atlantic Coast Line, fruits and vegetables	249,111
Seaboard Air Line, fruits and vegetables	216,120
Dead Freight Produced in Florida	
Florida East Coast, lumber, naval stores and forest products	122,451
Atlantic Coast Line, lumber, naval stores, forest products, phosphate and other mining products and cotton	2,686,624
Seaboard Air Line, lumber, naval stores, forest products, phosphate and other mining products and cotton	1,916,342

The tremendous discrepancy between the roads in this regard is to be seen by the following comparison of freights:

Florida East Coast, produced on line of road	247,343
Atlantic Coast Line, produced on line of	

road.....2,935,735
Seaboard Air Line, produced on line of road 2,132,462

We have excluded the Southern Railway from these comparisons because this road has little or no mileage in the State of Florida. In its most important run it uses the tracks of the Atlantic Coast Line and the Seaboard Air Line to find access into Jacksonville.

The mileage of the Atlantic Coast Line Railroad in Florida is less than four times that of the Florida East Coast Railway, and that of the Seaboard Air Line Railway in Florida is less than three times that of the Florida East Coast, while the Atlantic Coast Line Railroad in Florida handles more than five times the entire tonnage of the Florida East Coast Railway, and the Seaboard Air Line Railway in Florida handles 3 3-4 more than the entire tonnage of the Florida East Coast Railway. The aggregate tonnage of each road on all freights handled in Florida, whether produced on the line of road or not, for the fiscal year ending June 30, 1911, is as follows:

Florida East Coast Railway Company..... 787,658
Seaboard Air Line Railway.....2,830,088
Atlantic Coast Line Railroad Company.....4,087,839

The Florida East Coast Railway carries no phosphate, cotton or kaolin and but little naval stores or forest products or lumber, while the other roads, as shown, carry enormous quantities of this dead freight, the most profitable dead freight a railroad carries.

In conclusion, we submit that the Appellant in this case was entitled to the relief prayed and that the Commerce Court erred in sustaining the action of the Interstate Commerce Commission. By its action and decision it sustains the Commission in practically confiscating the entire line of road from Homestead to Key West; it appropriates every dollar of the earnings secured by the line from Homestead to Jacksonville, which the extension from Homestead to Key West brought to the balance of the main line and appropriates it to the use of the line from Homestead to Jacksonville, giving it to this part of the main line as a gift, and refusing to consider this contribution in the fixing of rates.

We submit: That the extension to Key West did not begin at Homestead, but began at Miami. We further insist that neither the Interstate Commerce Commission nor the Commerce Court possesses the power to ignore one portion of this main line and to arbitrarily fix a terminus which, in the very nature of things, could not possibly be a terminus, and we ask that the decision of the Commerce Court be reversed, with instructions to grant to this Appellant the relief prayed for.

All of which is respectfully submitted.

Alfred Allen Adams

Fred C. Bryan

Attorneys and Solicitors for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 858

FLORIDA EAST COAST RAILWAY COMPANY, Appellant,
vs.
THE UNITED STATES, Respondent;
Interstate Commerce Commission, *et al.*, Interveners, Appellees.

On Appeal from the Commerce Court.

BRIEF AND ARGUMENT

for

THE RAILROAD COMMISSIONERS OF FLORIDA.

The first nine assignments of error relied on by appellant attack the reasoning on which the judgment below is based, rather than the judgment itself. They may therefore be taken as subsidiary to the last two assignments, which go to the final judgment of the Court.

The last two assignments are:

TENTH ASSIGNMENT: "The Court erred in vacating the preliminary injunction and dismissing the petition."

ELEVENTH ASSIGNMENT: "The Court erred in not granting the relief prayed for in the petition."

It is the purpose of this brief, not to argue the various assignments, severally, but to attack only certain fundamental fallacies which underlie petitioner's theory of the case.

I.

IN THIS CASE ADEQUACY OF RETURN UPON THE FAIR VALUE OF PETITIONER'S PROPERTY IS NOT THE TEST OF REASONABLENESS.

A view of the petition makes it apparent that this case rests on the theory that the validity of the order in question is to be tested by the rule of Smyth v. Ames, that adequacy of return upon the fair value of the property being used by the carrier is the controlling factor.

The contentions of petitioner on this point are fairly summarized in the following language from the petition:

> "That your petitioner has not yet earned and is not now earning a reasonable profit on the money actually invested in its said road or on its present value; that your petitioner is entitled to earn at least 8 per cent. on the present value of its property, but that your petitioner has been contented to await for an enlargement and extension of business that would enable it to earn such reasonable profit and to pay reasonable dividends on its capital stock. And your petitioner respectfully represents that it is unreasonable to fix rates on freights at figures that will not enable your petitioner to pay the interest charges on its first mortgage bonds and on its general mortgage income bonds." Record, 8 – 9.

It is submitted that petitioner has proceeded on an erroneous theory.

The rule of Smyth v. Ames is not applicable because:

(a) The order in question in this case does not involve a general scheme of rates, "where rates as a whole are under consideration."

The rule of Smyth v. Ames is by the language of the Court clearly limited to those cases in which "a court without assuming itself to prescribe rates, is required to determine whether the rates prescribed * * * * for a corporation * * * * **are, as an entirety**, so unjust as to destroy the value of its property," etc.

169 U. S. 466, Smyth v. Ames.

The proper scope of the rule was defined by this Court in:

206 U. S. 1, A. C. L. Rd. Co. v. N. C. Corp. Com.

(Page 24) "Conclusive support for this contention, it is insisted, is afforded by the doctrine upheld in Smyth v. Ames * * * and the cases which preceded that decision. The cases relied upon, however, only involved whether a **general scheme of maximum rates** imposed by state authority prevented the railroads from earning a reasonable compensation," etc.

(b) The order in question in this case, as appears by its terms, does involve rates on specific articles, and thus the case is brought within the rule of the Union Pacific case.

222 U. S. 541, Interstate Commerce Commission v. Union Pac. Rd. Co.

(Page 549) "Where the rates as a whole are under consideration, there is a possibility of deciding with more or less certainty whether the total earnings afford a reasonable return. But whether the carrier earned dividends or not sheds little light on the question as to whether the rate on a particular article is reasonable. For, if the carriers total income enables it to declare a dividend that would not justify an order requiring it to haul one class of goods for nothing or for less than a reasonable rate. On the other hand, if the carrier earned no dividend, it would not have warranted an order fixing an unreasonably high rate on such article. But the absence of direct testimony that the 50 cent rate was unreasonably high is unimportant. Neither can any specific effect be given to the statement of witnesses that the 40 cent rate was low. The reasonableness of rates cannot be proved by categorical answers, like those given, where a witness may, in terms, testify that the goods were worth so much per pound, or the service worth so much a day. Too many elements are involved in fixing a rate on a particular article, over a particular road, to warrant reliance on such

method of proof. The matter has to be determined by a consideration of many facts."

Since the petition herein, in effect, prays the application of the rule of Smyth v. Ames in a case involving the reasonableness of rates on particular articles, it is manifest that the relief can not be granted.

II.

COST OF SERVICE WOULD HAVE PROVED A SOUNDER BASIS OF CALCULATION IN THIS CASE.

It follows that the order now under attack must be tested by some standard other than the rule of Smyth v. Ames. That standard is apparently found in the expressions of this Court and inferior Courts as to

COST OF SERVICE.

The following cases are pertinent:

186 U. S. 257, M. & St. L. Rd. Co. v. Minnesota.

(Page 266) "The difficulty with defendant's case is that it made no attempt to show the cost of carrying coal in carload lots * * *. True it may be difficult to segregate hard coal in carload lots from all other species of freight, and determine the exact cost to the company; but upon the other hand the commission in considering a proper reduction upon a certain class of freight, ought not to be embarrassed by any difficulties the companies may experience in proving that the rates are unreasonably low."

176 U. S. 167 Chicago, M. & St. P. Rd. Co. v. Tompkins.

"We think, therefore, there was error in the failure to find the cost of doing the local business, and that only by a comparison between the gross receipts and the cost of doing the business, ascer-

taining thus the net earnings, can the true effect of the reduction of rates be determined."

35 Fed Rep. 883, Chicago &c. R. Co. v. Becker.

(Page 886) "It is not within the power of the State, directly or indirectly, to put in force a schedule of rates, when the rates prescribed therein will not pay the cost of service."

35 Fed 866, Chicago &c. R. Co. v. Dey.

(Page 879) "Compensation implies three things: Payment of cost of service, interest on bonds and then some dividend. Cost of service implies skilled labor, the best appliances, keeping of the roadbed and the cars and machinery and other appliances in perfect order and repair."

203 U. S. 256, A. C. L. Rd. Co. v. State of Florida.

(Page 260) "There is testimony tending to show the gross income from all local freights and the value of the railroad property, and also certain difficulties in the way of transportng phosphates, owing to the lack of facilities at the terminals. But there is nothing from which we can determine the cost of such transportation. We are aware of the difficulty which attends proof of the cost of transporting a single article, and, in order to determine the reasonableness of a rate prescribed, it may sometimes be necessary to accept as a basis the average rate of all transportation per ton per mile. We shall not attempt to indicate to what extent or in what cases the inquiry must be special and limited. It is enough for the present to hold that there is in the record nothng from which a reasonable deduction can be made as to the cost of transportation, the amount of phosphates transported, or the effect which the rate established by the Commission will have upon the income. Under these circumstances it is impossible to hold that there was error in the conclusions reached by the Supreme Court of the State of Florida, and its judgment is affirmed.

164 Fed. Rep. 645, M. K. & T. Co. v. I. C. C.

(Page 648) "To be just and reasonable, within the meaning of the constitutional guaranty, the rates must be prescribed with reasonable regard for the cost to the carrier of the service rendered and for the value of the property employed therein; but this does not mean that regard is to be had only for the interests of the carrier, or that the rate must necessarily be such as to render its business profitable, for reasonable regard must also be had for the value of the service to the public. And where the cost to the carrier is not kept within reasonable limits, or where for any reason its business cannot reasonably be so conducted as to render it profitable, the misfortune must fall upon the carrier, as would be the case if it were engaged in any other line of business."

The importance of the cost of service, as a factor in determining the reasonableness of rates, has never been denied; but it has often been neglected, because of the difficulty in ascertaining such cost.

On this point however it has been said by this Court in the Minnesota case, supra, that the Commission "ought not to be embarrassed by any difficulties the companies may experience in proving that the rates are unreasonably low."

The neglect of this factor, however, has been more apparent than real.

Does not this factor in reality underlie the conclusion in every case involving the reasonableness of rates?

It is quite certain that this factor does underlie the rule of Smyth v. Ames. That rule reduced to its final analysis apparently rests upon this basis:

The fundamental principle is that a carrier is entitled, under normal conditions, to be paid, for the service it performs, an amount sufficient to cover the cost of that service and a reasonable profit.

Logically, then the first step is to determine the cost of the service, if it can be ascertained. This first step is often very difficult; but there is one class of cases, represented by Smyth v. Ames, where the step is so easy that we often fail to realize that it is a part of the process.

In cases of this class, "where the carrier's rates as a **whole** are under consideration," it is manifest that the service rendered to earn those "rates as a whole" is the **entire service** performed as a common carrier; and it is equally manifest that the total cost of that service is identical with the carrier's total operating expenses, while the difference between operating revenues and operating expenses is the carrier's profit on its investment.

Then the final step in the process is to determine whether that profit is reasonable; and Smyth v. Ames, taking the process for granted, stating the result but not the method, institutes a comparison between the ascertained profit derived from the entire service and the total investment employed in that service and thus reaches an accurate result as to the reasonableness of that profit.

Clearly, it is impossible that this same comparison should give any result as to the profit derived from a particular service or as to the reasonableness thereof.

The decisions of this Court, cited supra, make inevitable the conclusion that, in cases involving the reasonableness of rates on particular articles, the **cost of service** is an essential factor. The petition herein has ignored that theory of the case. Hence the relief sought was properly refused by the Court below.

It might be said that the evidence is not lacking in data as to the cost of service. This is true, and, though the pleadings do not justify the consideration of such evidence, though such consideration involves a complete departure from petitioner's theory of the case, it may not be amiss to exami that evidence far enough to determine what its tendency is.

It is the testimony of a witness for petitioner that its rates are based on the assumption that the average cost per ton per mile for hauling freight is 5 mills (Record 462); but it may be said that the cost of hauling fruits and vegetables runs higher than the average cost.

There is evidence to this effect, but no attempt was made to show what this difference amounts to. However, there is evidence that may be profitably considered in this connection.

It is shown (Record 538) that on pineapples from Key West to Jacksonville when destined to Cleveland the peti-

tioner receives 16 cents per box of 80 lbs., which amounts to 9 mills per ton per mile.

As to this business a witness for petitioner says (Record 471) "we don't feel that we are losing anything on the Cuban business."

Hence we must conclude that the cost of service on pineapples lies somewhere between 5 mills per ton per mile and 9 mills per ton per mile; and in the absence of other evidence there is no reason apparent for a greater cost in handling oranges and vegetables.

Having approximated the cost of this particular service, how is the profit to be ascertained?

It is in evidence (Record 904) that petitioner's operating expenses and operating revenues stand in the relation of 62.24 to 100; that is to say, $62.24 expended for cost of service (operating expenses) produces a return of $100.00 (operating revenues).

This being true, what proportionate return will result from 9 mills per ton per mile expended for cost of a particular service?

It is a simple problem in proportion. If the petitioner be allowed the benefit of the doubt, by placing the cost of service on fruits and vegetables at 9 mills per ton per mile, the problem is:

62.24 : 100 :: 9 : X

Worked out, the result is

X=13.8 mills.

The conclusion then is that if the carrier is to earn the same profit above cost of service on this business as on its business taken as a whole, the income from fruits and vegetables ought to be—

Per ton per mile.....13.8 mills.

But the evidence is that under the rates now in controversy the carrier will earn per ton per mile—

On vegetables ..... 22.02 mills
On citrus fruits ..... 21.16 mills

(Record 847)

851

Thus there is for the carrier a margin of safety amounting to over 8 mills per ton per mile in the one case and more than 7 mills in the other.

This brings petitioner to the two horns of a dilemma.

(1) If it be said that the evidence as to cost of service is not sufficient to justify a conclusion on that point, the petitioner must fail, because:

The burden rests upon petitioner to overcome the presumption of reasonableness which follows the Commission's order; and, under the doctrine of the Minnesota case, supra, cost of service is an essential factor in determining as to the reasonableness of rates in cases of this class. Then, for its failure to establish the cost of service, the penalty must fall upon petitioner's own head.

(2) If it be said that the cost of service has been shown by the evidence, the answer is that the same evidence shows the profits earned by that particular service to be materially in excess of the percentage of profits heretofore earned by petitioner on its business taken as a whole, which fact makes it clear that there has been an inequality in rates; and thus the case is brought clearly within the rule of

> 203 U. S. 261, Seaboard Air Line Railway v. State of Florida.
>
> (Page 269) "Now, whether this order of June 25, 1903, was simply operative to make the rates on the Florida West Shore road the same as those obtaining generally in the State, or whether it made them higher or lower than such rates, does not appear * * * * * The State might properly insist that there should be equality in the rates—the conditions being the same—and if nothing more was accomplished by the order of the Commission than to establish such equality, we can not hold that the judgment of the Supreme Court was erroneous."

III.

AVERAGE FREIGHT RECEIPTS AS A TEST.

A comparison of the carrier's average freight receipts

per ton per mile with the rate per ton per mile fixed by a contested order was recognized by this Court as a satisfactory test of reasonableness in one of the Florida Phosphate cases, cited supra, where the Court said:

> 203 U. S. 261, S. A. L. Ry. v. Florida:
>
> (Page 270) "Further, when we turn to the report of the railroad company (which, of course, is evidence against it), we find that the company's average freight receipt per ton per mile in the State of Florida was 8.15 mills; so that the rate authorized for phosphates was nearly 2 mills per ton larger than such average. Under these circumstances it is impossible to say that there was error in the conclusions of the Supreme Court of the State, and its judgments are affirmed."

This is another available test which petitioner has failed to use, having apparently ignored this theory of the case. There is, however, evidence sufficient to make it plain that under this test petitioner would not be entitled to relief.

If we allow to petitioner the most that can be claimed for it,

The average of freight receipts per ton per mile is (Record ——) ..456..8.61 ..... 17.7 mills
while the contested rates will yield the carrier—
On vegetables (Record 342) ..... 22.02 mills
On citrus fruits (Record 351) ..... 21.16 mills
leaving a margin of more than ..... 4 mills
in the one case and in the other more than .... 3 mills

Since the Supreme Court has held a margin of less than two mills to be safe, surely margins of three and four mills in this case must be safe.

IV.

THERE IS NO SEPARATION OR APPORTIONMENT OF INTERSTATE AND INTRASTATE BUSINESS.

Because there is no separation or apportionment of inter-

state and intrastate business, petitioner was not entitled to the relief sought, even if the rule of Smyth v. Ames could be held applicable, for it is a part of that rule that interstate and intrastate business must be kept separate.

169 U. S. 466, Smyth v. Ames.

(Page 541) "In our judgment, it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. This State can not justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business, a similar one may be in Illinois, Minnesota, and other States through which the company's road should not be made to bear the losses on interstate business, nor the latter the losses on domestic business. It is only rates for the transportation of persons and property between points within the State that the State can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect of domestic busi ness."

This decision was foreshadowed in the opinion of Mr. Justice Brewer, then Circuit Judge, in the Dey Case.

35 Fed. Rep. 866, Chicago &c R. Co. v. Dey.

(Page 881) "But the invalidity of this schedule does not depend upon legislation or action elsewhere. If this schedule may be put in force here,

runs. For some purposes its property in this State is separate and distinct from its property elsewhere, and out of this property within this State it is entitled to receive some compensation. Robbing Peter to pay Paul has never received judicial sanction."

The doctrine has been applied by many courts. It is well stated in—

170 Fed Rep. 725, So. Pac. Co. v. Bartine.

(Pages 769-770) "The facts in relation to the business of the company for the fiscal year ending June 30, 1907, are introduced to demonstrate the injustice of the maximum rates, not as applied to the whole business, nor as applied to the whole intrastate business, but only as applied to domestic freight traffic. No evidence so introduced shows the amount of domestic freight handled, the average distance it was hauled, the rates charged, the total compensation, or the operating expenses incurred in moving it. If we know neither the service performed, the compensation received, nor the expense incurred, how can we determine whether lower rates and charges for transportation are reasonable or unreasonable? If the net income from domestic freight traffic is relatively large, that branch of the business may be profitable, though the business as a whole is very unprofitable. The facts are not given from which we may determine whether the charges are higher or lower, or whether the operating expenses are greater or less for intrastate freight than for other business of the company. State v. Atlantic Coast Line R. R. Co., 48 Fla. 146, 37 South. 657.

The testimony here is wholly insufficient to overcome the presumption in favor of the constitutionality of the act, and the reasonableness of the maximum rates therein set forth."

Other cases discussing the matter in greater detail are:

91 Fed. 47, No. Pac. Ry. Co. v. Keyes.
(Pages 48-9.)

48 Fla. 129 (37 So. Rep. 314), State v. S. A. L. Ry.
(Pages 144-5.)

48 Fla. 146 (37 So. 657) State v. A. C. L. R. Co.
(Pages 148-9.)

"While a State is not permitted to offset local business against interstate business and to justify low local rates by reason of the profitableness of the latter, yet the interstate and foreign business may and should be considered in determining the proportion of the value of the property of the company assignable to local business. There is no proper showing of the interstate and foreign business, so that we may determine on what fraction of the whole value of the property in Florida the company might be entitled to earn an income from local business. There is no proper showing of the interstate and foreign business, so that we may determine on what fraction of the whole value of the property in Florida the company might be entitled to earn an income from local business. There is, however, a showing that the interstate and foreign business is large, and on a proper showing and a proper proportioning of the service between domestic and foreign business this percentage of net income would be largely increased."

163 Fed. Rep. 141, In re Arkansas R. Rates.

184 Fed. Rep. 765, Shepard v. No. Pac. Ry. Co., where the rule is clearly recognized.

185 Fed. Rep. 321, Love v. A. T. & S. F. Ry. Co.

187 Fed. Rep. 290, In re Arkansas Rate Cases.
(Page 310) "The matter of most importance to be determined is whether the rates, freight and passenger, in force at the time of the institution of these actions by order of the State Railroad Com-

mission and the Legislature of the State, were so unreasonably low as to justify the Court to enjoin their enforcement, upon the ground that they are noncompensatory to an extent which makes them practically confiscatory of complainants' property. To determine that question it is necessary for the Court to ascertain and make findings what the investment of each road is; what its gross earnings from the intrastate traffic, freight and passenger, are; what the expenditures necessary for the proper management of the roads are; **how to apportion the investment and expenditures between the intra and interstate business;** what the net earnings from all the intrastate traffic are; and what would be a reasonable return on the investment."

It follows that, even if petitioner's theory of the case could be accepted, petitioner has fallen short in failing to establish this essential factor.

V.

AS TO DISREGARDING THE VALUE OF THE KEY WEST EXTENSION.

If this case were properly governed by Smyth v. Ames, there is still a fatal defect in petitioner's processes in this:

That petitioner's case apparently rests on the theory that the rates must necessarily be such as to render its business profitable; that the public must guarantee the railroads a certain income on their investment, regardless of the condition of the country traversed, or whether bad judgment was exercised in the selection of the route. Record 12

The view of the Court below is to the contrary.

This is no new doctrine.

This Court and lesser tribunals, before the Commerce Court, have recognized the rule, though they have not been called on to make exactly the same application that was made by the Court below.

154 U. S. 362, Reagan v. F. L. & T. Co.

(Page 412) "It is unnecessary to decide, and we do not wish to be understood as laying down

as an absolute rule, that in every case a failure to produce some profit * * * * * is conclusive that the tariff is unjust and unreasonable * * * * There may be circumstances which would justify such a tariff. There may have been extravagance, and a needless expenditure of money. * * * * * * The road may have been unwisely built in localities where there is no sufficient business to sustain a road.'

189 U. S. 439, San Diego Land and Town Co. v. Jasper.

(Pages 446-7) "If a plant is built, as this probably was, for a larger area than it finds itself able to supply, or, apart from that, if it does not, as yet, have the customers contemplated, neither justice nor the Constitution requires that, say, two-thirds of the contemplated number should pay a full return. The only ground for such a claim is the statute taken strictly according to its letter. * The statute of California no doubt was contemplating the case of water-works fully occupied within the area which they intended to supply. It hardly can have meant that a system constructed for six thousand acres should have a full return upon its value from five hundred, if those were all that it supplied. At all events, we will not be the first to say so. If necessary to avoid that result, we should assume that only a proportionate part of the system was actually used and useful within the meaning of the statute."

To the same effect are—

164 U. S. 578, Covington v. Sanford.

169 U. S. 466, Smyth v. Ames.

That the Commerce Court are not alone in their construction of the language of this Court is apparent from the view expressed in the following cases:

164 Fed. Rep. 645, M. K. & T. R. Co. v. Interstate Com. Com.

(Page 648) "And where the cost to the carrier is not kept within reasonable limits, or where for any reason its business can not reasonably be so conducted as to render it profitable, the misfortune must fall upon the carrier, as would be the case if it were engaged in any other line of business."

168 Fed. Rep. 720, In re Arkansas Railroad Rates.

(Page 733) "Must the public guarantee the railroads a certain income on their investment, regardless of the condition of the country traversed, or whether bad judgment was exercised in the selection of the route? We do not think so. New lines or branches to increase the business of the main line, or the exercise of bad judgment in the building of a railroad, are matters to be considered in determining what rates would be fair and just to the corporation as well as the public."

170 Fed. Rep. 725, So. Pac. 60 v. Bartine.

(Page 767) "If a railroad is built into a new, sparsely settled territory with a view of serving a large future population and developing business, the Constitution does not require the few people and the small business of the present time to pay rates which will yield an income equal to the full return to be gathered when the country is populated and business developed to the full capacity of the road."

177 Fed. Rep. 493, M. K. & T. R. Co. v. Love.

(Page 501) "Rates should be just both to the public and to the owner of the railroad * * * * It does not appear in these cases that the roads were ill conceived, greater in extent than they should be, unduly expensive in construction, or that they are not operated wisely and economically. It, therefore, does not seem that rates producing no more than a reasonable return on their fair value could be unjust to any one."

In the San Diego case, quoted supra, this court, after sustaining a low rate of return upon the company's investment, announces that it would have been proper, as sustaining the view of the court, "to assume that only a proportional part of the system was actually used and useful within the meaning of the statute."

So the Interstate Commerce Commission in this case, and the Court below, might have held a low rate of return to be ample compensation to the petitioner in view of the character of petitioner's investment, or it was proper "to assume that only a proportional part of the system was actually used and useful."

The foregoing authorities are sufficient to sustain either course, and clearly the court below was justified in sustaining the action of the Commission in this respect.

CONCLUSION.

I. This case is not controlled by the rule of Smyth v. Ames. It is not a case in which the value of the property is the proper basis of calculation as a test of reasonableness. Therefore, petitioner's theory of the case is wholly erroneous.

II. The cost of the service rendered would have been a sounder basis of calculation in this case, and petitioner has not met that requirement.

III. Petitioner might have used the average freight receipts as a test, but has not met that requirement.

IV. Even if this case were controlled by the rule of Smyth v. Ames, the petitioner is not within the terms of that rule because there is no separation or apportionment of interstate and intrastate business.

V. Even if this case were controlled by the rule of Smyth v. Ames the petitioner is not within the terms of that rule because petitioner's theory of the case assumes that the carrier is entitled to a profit on its investment regardless of qualifying circumstances.

It is submitted that the foregoing five propositions are sustained, and that if any one of those propositions is well founded, the petitioner was not entitled to the relief prayed; and that, therefore, the judgment of the court below ought to be affirmed.

Respectfully submitted,

FREDERICK M. HUDSON,
Attorney for the Railroad Commissioners of Florida.

JAN 4 1913
JAMES H. McKENNEY,

No. 883.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

FLORIDA EAST COAST RAILWAY COMPANY,
Appellant,

v.

THE UNITED STATES, RESPONDENT; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENING RESPONDENTS,
Appellees.

APPEAL FROM THE COMMERCE COURT.

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

CHARLES W. NEEDHAM,
Assistant Solicitor for the Interstate Commerce Commission.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1913

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In the Supreme Court of the United States.

OCTOBER TERM, 1912.

FLORIDA EAST COAST RAILWAY COMPANY, *Appellant*,

v.

THE UNITED STATES, RESPONDENT; INTERSTATE COMMERCE COMMISSION ET AL., INTERVENING RESPONDENTS, *Appellees*.

No. 858.

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

STATEMENT.

This case involves an order of the Interstate Commerce Commission, entered on the 6th day of November, 1911, declaring unreasonable the existing rates, and establishing, for the future, reasonable mileage rates on fruits and vegetables from producing points to the base point in Florida, when destined for points beyond in other States, over the Seaboard Air Line Railway, the Atlantic Coast Line Railroad, and the appellant, Florida East Coast Railway. The first two named carriers have complied with, and do not question, the order.

The complainants before the commission were, the Railroad Commission of the State of Florida and the Florida Fruit and Vegetable Shippers' Association of Florida. These complainants, acting on behalf of the fruit and vegetable growers of the State, sought to secure reasonable rates, upon a mileage basis, from all parts of the State to Jacksonville, the base point, to be applied to interstate shipments.

The Florida State Railroad Commission is required by statute (sec. 2898, Chap. 5, Gen. Stat. of Fla.)—

> * * * to investigate thoroughly all through freight rates from points out of Florida to points in Florida, both those now fixed and those that may hereafter be fixed. Whenever said railroad commission finds that a through rate charged into or out of Florida is, in their opinion, excessive or unreasonable or discriminating in its nature, it shall be the duty of said commission to call the attention of the railroad officials in Florida to the fact and to urge upon them the propriety of changing such rate or rates. Whenever such are not changed according to the suggestions of the railroad commissioners, it shall be the duty of the commission to present the facts, whenever it can be done, to the Interstate Commerce Commission and appeal to it for relief.

The act of Congress to regulate commerce provides that—

> Said [Interstate Commerce] Commission shall, in like manner, and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or

> railroad commission of any State or Territory at the request of such commissioner or commission. (Sec. 13.)

In the report of the Interstate Commerce Commission in this case it is stated:

> Numerous complaints were made to the Railroad Commission of Florida that these fruit and vegetable rates up to the base point were excessive, and the commission, for the purpose of informing itself, held investigations in all parts of the State where these defendants operate. (Record, p. 22.)

Failing to secure relief from the carriers, and with a view to securing reasonable rates and, so far as possible, a uniform scale of mileage rates to Jacksonville from every part of the State, the Railroad Commission of Florida, on January 28, 1911, filed its complaint with the Interstate Commerce Commission against the Seaboard Air Line Railway and the Atlantic Coast Line Railroad. This case is known as No. 3808 on the commission's docket. The railroad commission also intervened in case No. 1168, in which the appellant was a party defendant. (Record, pp. 21, 22.) In these two cases all the gathering charges on fruits and vegetables within the State of Florida—except the rates on pineapples then in force upon the Florida East Coast Railway—were under attack by the railroad commission of that State.

In order to distinguish the case under consideration from others that preceded it, it should be borne in mind that case, No. 1168, was origi-

nally commenced in 1908 and involved the reasonableness of the rates from points of production in Florida to points of destination in other States. The rates then under consideration were divided into two parts: (1) The gathering rates from points of production to the base points—principally Jacksonville—and (2) from the base point to points of final destination in the United States east of the Rocky Mountains; the sum of these rates constituting the through charge. The commission held that the rates from the base points to points of destination were unreasonable, and fixed reasonable rates, but approved, upon the evidence at that hearing, the reasonableness of the gathering rates. This case was decided June 25, 1908, and is reported. (*Florida Fruit & Vegetable Shippers' Protective Association* v. *A. C. L. R. R. Co.*, 14 I. C. C. Rep. 476.)

In a supplemental proceeding instituted by pineapple growers located upon the line of the appellant, the gathering rates on pineapples and citrus fruits were the subject of investigation. The result of that hearing, and a subsequent modification of the order excepting citrus fruits, required appellant to put in carload and less-than-carload rates and distance rates on pineapples on the appellant's line. The appellant complied with the order and put the rates in force. This case was decided February 8, 1910. (*Florida Fruit & Vegetable Shippers' Protective Association* v. *A. C. L. R. R. Co.*, 17 I. C. C. Rep. 552.)

The orders in both of the cases referred to were complied with and neither the orders, or the procedure in either case, are in controversy in this case.

THE CASE IN CONTROVERSY.

The case before the commission in which the order in question was entered was, as above noted, instituted by the Florida State Commission by an original complaint and an intervention in case No. 1168. These complaints were set for hearing, as one case, before Commissioner Prouty, at Jacksonville, Fla., March 2, 1911. The three defendant carriers, including the appellant, appeared at the hearing. The issue was clearly stated by the commissioner as follows:

> Gentlemen, we are here once more to take up the fruit and vegetable question, this time from the point of production up to the base point. * * * I think these two proceedings put in issue rates generally on vegetables and citrus fruits from points of production in Florida up to the base points. * * * Who appears for the Florida East Coast Railway Co.?
>
> Mr. ST. CLAIR-ABRAMS. I do.
>
> (Record, p. 1511.)

As stated by the commission in its report of this case (Record, p. 21):

> It will be seen, therefore, that in these two proceedings all the gathering rates in the entire State of Florida, except the rates on pineapples now in force on the Florida East Coast Railway, are under attack and that

these proceedings are instituted by or have the support of the railroad commission of that State.

A large amount of evidence was taken in this last hearing, with elaborate statements by counsel. (Record, pp. 1511 to 1620, inclusive.) It was also agreed that, so far as applicable, the evidence taken in the two preceding hearings should be considered by the commission in the pending case. A certified copy of the evidence in the two preceding cases, as well as a certified copy of the evidence taken in the pending case, was before the Commerce Court. In diminution of the record upon this appeal, a stipulation between the appellant and appellees was made (Record, p. 1649) eliminating certain documents, including the certified copies of the evidence taken in the first two cases, and these documents and records are not included in the record here. In lieu thereof it was stipulated that the statement of the issues and facts in the first two cases is contained in the commission's reports, and said reports may be referred to on the hearing of this appeal as containing a correct statement of the issues and facts in those cases. It follows, therefore, that objections to procedure can only be taken to action in the pending case, commenced January 28, 1911, and objections to the order, on the ground that the order is arbitrary, must be determined with reference to the record of the evidence taken in the last case and the statement of facts contained in the commission's reports of the first two cases. There are many exhibits still in

the record—letters, affidavits, etc.—bearing date prior to January 28, 1911, which have no relevancy to the issues herein.

THE ISSUES.

In the Procter & Gamble case this court, speaking through the Chief Justice, held that—

> The courts were confined by statutory operation to determining whether there had been violations of the Constitution, a want of conformity to statutory authority, or of ascertaining whether power had been so arbitrarily exercised as virtually to transcend the authority conferred, although it may be not technically doing so.

The issues herein therefore are:

1. Does the order in question violate the provisions of the Constitution of the United States (*a*) guaranteeing due process of law, and (*b*) requiring that just compensation be paid for property taken for public use?

2. Did the commission, in the proceeding in which the order was entered, conform to statutory authority?

3. Did the commission, in making the order in question, exercise its power so arbitrarily as virtually to transcend the authority conferred by the statute?

To confine the argument within the limits of judicial inquiry defined by this court, the issues raised by the assignments of error are discussed herein under the general heads above stated.

I.

Does the order in question violate the provisions of the Constitution of the United States (a) guaranteeing due process of law and (b) requiring that just compensation be paid for property taken for public use?

DUE PROCESS OF LAW.

Due process of law is not limited to judicial procedure; it includes measures and procedure of a summary nature. It requires that there shall be a tribunal authorized by law to determine the matter, and all parties interested in the determination must have notice and an adequate opportunity to be heard.

Den v. *Hoboken Land Co. etc.*, 18 How. (U. S.), 272.
Twining v. *New Jersey*, 211 U. S. 78.
Reeves v. *Ainsworth*, 219 U. S. 296.
U. S. v. *Grimaud*, 220 U. S. 506.
Blinn, Receiver, etc., v. *Nelson*, 222 U. S. 1.
U. S. v. *B. & O. S. W. R. R.*, 222 U. S. 8.
Standard Oil Co. v. *Mo.*, 224 U. S. 270.
Jordan v. *Mass.*, 225 U. S. 167.

The sole issue, in the case at bar, before the commission was the reasonableness of the gathering rates upon fruits and vegetables from points of production in Florida to the base points, applied to interstate traffic. The issue was clearly stated at the opening of the investigation by Commissioner Prouty. The commission is the primary tribunal, authorized by the statute, to determine such issues; section 15 of the act to regulate commerce, as amended, and

construed by this court, confers upon the Interstate Commerce Commission the power to determine the reasonableness of rates for the future; and in reviewing the orders of the commission only questions of law and arbitrary action are to be considered. Upon the questions of fact the decisions of the commission are conclusive.

Procter & Gamble v. *U. S.*, 225 U. S. 282, 297.

I. C. C. v. *U. P. R. R. Co.*, 222 U. S. 541, 547.

I. C. C. v. *Ill. Cent. R. R.*, 215 U. S. 452.

This disposes of the first assignment of error as to power.

The claim made by the appellant, that the commission declined to admit proper evidence offered by appellant, is based upon a reply by Commissioner Prouty to a question by Mr. St. Clair-Abrams. The question and answer follow a discussion about the cost of the appellant's railroad. The question and answer are found upon page 1565 of the record, and are as follows:

> Mr. ST. CLAIR-ABRAMS. * * * Now, I insist, if this question is to be opened up entirely, and these radical reductions are to be made, we should be afforded an opportunity of showing what the present value of our property is.
>
> Commissioner PROUTY. I do not think, Mr. St. Clair-Abrams, that we shall make reductions or decline to make the reductions from the revenue standpoint. I do not quite see

> how you can construct your rates on that basis, or how we can approve or disapprove of your rates on that basis.

The commissioner had reference here to the theory that no reduction of particular rates could be made if such reduction would operate to reduce the net revenues of the company so that a given return could not be earned upon the present value of the entire railroad; or, that single rates, or rates upon a particular traffic, are to be determined by reference to the net revenues from the entire system of rates in force upon the road. While recognizing that the general financial condition of a railroad company, as shown by its financial reports to the commission, is always a proper subject of consideration in fixing rates, Mr. Prouty said (Record, p. 1514):

> I do not believe we can take the capitalization of one of these railroads to-day and make that the basis of these vegetable rates. I do not think we can do that. But we ought to try and fix what is a reasonable rate.

This theory, and what constitutes a reasonable rate, is discussed hereafter under the head of "confiscation."

In reference to the point here made that proper evidence was excluded, we claim that in ascertaining the reasonableness of a single rate, or rates upon a particular traffic, it is not the duty of the commission nor is it within the province of the court to enter upon a valuation of an entire railroad system. This would largely defeat regulation.

A fair opportunity was given to the appellant to submit any testimony bearing upon the reasonableness of the rates under consideration. Commissioner Prouty stated (Record, p. 1515):

> We would like to hear any testimony you want to introduce. I simply suggest to you that if we are going to reexamine that question it should be done now in a sufficiently comprehensive and exhaustive manner, so that whatever conclusion is reached will stand for the next dozen years unless some unusual thing happens. The railroads ought to know what to depend upon and the shippers ought to know what to depend upon, and this market ought to know what to depend upon, and this point of production ought to know what to depend upon as compared with other localities of production. We will hear, of course, any testimony you desire to introduce.

Aside from the mere statement of appellant's counsel that—

> "We should be afforded an opportunity of showing what the present value of our property is."

and the reply of Commissioner Prouty that he did not think these rates could be determined "from the revenue standpoint," there is no claim that any evidence offered or suggested by counsel was excluded. This ruling, if it can be called a ruling, can not, for the reasons hereinafter stated, be regarded as error.

The conclusions of the commission were arrived at, and its order was entered, upon substantial evidence regarding the particular traffic under consideration, the service rendered, and the reasonableness of the rates applicable thereto. Due process of law was therefore observed in the entry of the order in question.

CONFISCATION.

The word "confiscation" has been used in judicial decisions in reference (1) to orders requiring a company to perform a particular transportation service for less than the cost of the service with some profit, and (2) to a system or tariff of rates which does not permit the company to earn a reasonable return upon the value of its transportation property.

CONFISCATION AS APPLIED TO A SINGLE RATE.

There can be no claim in this case that the rates prescribed do not give to the carrier a large profit above the cost of the service.

Mr. Kirtland, the traffic manager of the Florida East Coast Railway, gave some statistics regarding the cost of transportation. (Record, p. 463.) He said:

> We must not go below a certain figure because it would be at a loss.
>
> "Q. How do you arrive at that minimum?
>
> "A. Well, it is the old stereotype that everybody uses, at half a cent a ton a mile."

In reference to the rates fixed by the commission, he stated that on citrus fruits from Miami to Jackson-

ville, the longest haul and the lowest rate per mile, the rate would be 1.7 cents, or 17 mills per ton per mile. (Record, p. 456.) Accepting these figures as a perfectly safe basis of calculation, this shows that the lowest rates fixed by the order gave a profit, over the cost of transportation, of 12 mills per ton per mile.

This witness also stated the income per car from Miami to Jacksonville, under the rates fixed by the commission, at $78; twelve-seventeenths of this would show a net profit of $54 per car. The gross rate on coal, fertilizers, etc., for the same distance was $36 per car. They carried the Cuban pineapples on a rate of 66½ cents from Key West to Chicago, the appellant receiving only a portion of this rate for its haul to Jacksonville—he said that there was a profit on the Cuban business. (Record, pp. 261, 262.)

Confiscation can not, therefore, be claimed on the ground that the rates prescribed do not allow the appellant a handsome profit above the cost of service.

CONFISCATION CAN NOT BE PREDICATED OF A REDUCTION OF TOTAL REVENUE OF THE CARRIER CAUSED BY AN ORDER OF THE COMMISSION REDUCING A SINGLE RATE OR RATES UPON A PARTICULAR TRAFFIC.

The third, fourth, fifth, seventh, ninth, and eleventh assignments of error find their basis in the claim that the reduction of these rates, when computed on the volume of the traffic for the preceding year, would decrease the gross revenues, and in that way the net revenues, about $131,000 per annum;

and it is claimed that this reduction in gross revenues would render it impossible for the appellant to earn a fair return upon the value of its entire property. Appellant therefore claimed the right to have its entire property valued by the court and this theory applied.

Congress has not yet appropriated money for, nor has it authorized the commission to make, a valuation of railroad properties. To make a proper valuation the commission would have to establish an engineering department and employ competent engineers and experts. Until such appropriation is made and such a force has been organized, it is impossible for the commission, as respondent in these cases, to properly defend a petition based upon such a theory as is here proposed. While this can not of itself deprive the court of jurisdiction, if such a proceeding is authorized by law, we present the fact to show the gravity and importance of the question involved.

The act to regulate commerce authorizes the commission to determine the reasonableness or unreasonableness of "any individual or joint rates or charges." Rates are therefore treated singly or with reference to a particular traffic. Congress has not, nor has the Interstate Commerce Commission established a system of rates for any company. The tariff of the appellant has never been examined to ascertain whether its rates upon other traffic are fair to the public. There is no evidence, and we claim there is no presumption that the rates, other than those

herein established, are reasonable. It is only in cases where a system of rates *prescribed by law* is under consideration that there is a presumption that all the rates in the tariff are reasonable and just to the public. In the *Arkansas Rate Case* (187 Fed. Rep. 290, 294) Trieber, district judge, speaking of a system of rates established by law, said:

> Presumptively, rates established by authority are reasonable and just, and the burden of proof to show the contrary is upon the party attacking them.

No such presumption can be indulged in favor of a tariff of rates fixed by the carrier. To say that an unreasonable rate, or unreasonable rates upon a particular traffic, can not be reduced if the effect upon the gross revenues will be to reduce the earnings below what would be a fair return upon the value of the entire property, upon the assumption that all the rates in the schedule were reasonable, would absolutely prevent, in most cases, the commission from carrying out the provisions of the statute, by granting relief against unreasonable rates and charges.

In the cases where the railroad property of the carrier has been valued, it was done with a view of determining whether a schedule of rates *in its entirety* was confiscatory. In the case at bar such an inquiry involves the question whether all rates in the schedules are reasonable. This carrier may be carrying certain traffic at less than cost; it may be carrying very much traffic below what is a reasonable profit, and making

up these losses by charging unreasonable high rates upon fruits and vegetables. Surely in such cases it would defeat the statute to say that these unreasonable rates upon fruits and vegetables could not be reduced because of the effect upon the gross receipts.

In the State cases systems of rates applicable to intrastate traffic have been established by or under the authority of the State legislatures. These tariffs came before the court upon two contentions, (1) that the system of rates was confiscatory, and (2) that the system of rates prescribed for intrastate commerce constitutes an unreasonable burden upon interstate commerce. In these cases the single rates included in a particular tariff were not considered; having been fixed by law they were presumed to be reasonable; the issues were determined upon a consideration of the effect of the tariff *as an entirety.* Treated as a whole, as a system of rates established by law, inquiry was directed to the reasonableness of the tariff in producing a return upon the value of the entire transportation property put to the use of the public. In these cases a valuation of the railroad property was properly made. The presumption in such cases is that all the individual rates established by law are reasonable, and if the tariff as a whole, measured by existing traffic, produces sufficient revenue to constitute a fair return upon the value of the property it is not confiscatory. As no presumption of reasonableness exists in the case of a tariff constructed by the carrier, an investigation of the single rates in

the tariff would have to be made to determine their reasonableness. No such investigation has been made in the case at bar, and the question whether the gross revenues of appellant, after balancing against them the gross operating expenses, will leave a net balance sufficient to pay a fair return upon the value of the entire property is not an issue which the court can, in the first instance, investigate and determine.

With a view of elucidating this point and supplying authority for the position here taken, we submit the following excerpts from important cases.

Pursuant to the powers granted by the legislature of Texas, the State commission made a classification and a "body of rates" applicable thereto. These rates, as a whole, were challenged as unreasonable, unjust, and confiscatory. This court, speaking through Mr. Justice Brewer, said:

> The courts are not authorized to revise or change the body of rates imposed by a legislature or a commission; they do not determine whether one rate is preferable to another, or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work; but still there can be no doubt of their power and duty to inquire whether *a body of rates prescribed by a legislature or a commission* is unjust and unreasonable, and such as to work a practical destruction to rights of

> property, and if found so to be, to restrain its operation.
>
> * * * * *
>
> A classification was made by the commission, and different rates established for different kinds of goods. These rates were prescribed by successive circulars. * * * By these circulars, rates all along the line of classification were reduced from those theretofore charged on the road. The challenge in the case *is of the tariff as a whole, and not of any particular rate upon any single class of goods.* As we have seen, it is not the function of the courts to establish a schedule of rates. It is not, therefore, within our power to prepare a new schedule *or rearrange this.* Our inquiry is limited to the effect of the tariff *as a whole*, including therein the rates prescribed for all the several classes of goods, and the decree must either condemn or sustain this act of the quasi legislation. (*Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 397.)

An act of the Legislature of Nebraska "to regulate railroads, classify freights, and fix reasonable maximum rates," was considered, and this Court, speaking through Mr. Justice Harlan, said:

> It can not, therefore, be admitted that a railroad corporation maintaining a highway under the authority of the State may fix its rates with a view solely to its own interests, and ignore the rights of the public. But the rights of the public would be ignored if rates for the transportation of persons or property

on a railroad are exacted without reference to the fair value of the property used for the public *or the fair value of the service rendered,* but in order simply that the corporation may meet operating expenses, pay the interest on its obligations, and declare a dividend to stockholders.

* * * * *

What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway *than the services rendered by it are reasonably worth.* * * * (*Smyth* v. *Ames,* 169 U. S. 466, 541, 544, 547.)

In the Arkansas case, Mr. Justice Shiras, speaking for the court, said:

This court has declared, in several cases, that there is a remedy in the courts for relief against legislation *establishing a tariff of rates* which is so unreasonable as to practically destroy the value of property of companies engaged in the carrying business, and that especially may the courts of the United States treat such a question as a judicial one, and hold such acts of legislation to be in conflict with the Constitution of the United States, as depriving the companies of their property without due process of law, and as depriving them of the equal protection of the laws. * * *

The act of the Legislature of Arkansas fixed a maximum rate of 3 cents per mile for passenger fares throughout the State. It was claimed in this case that one branch of the road could not carry passengers for this fare without loss. The court further said:

> * * * the correct test was as to the effect of the act on the defendant's entire line, and not upon that part which was formerly a part of one of the consolidating roads; that the company can not claim the right to earn a net profit from every mile, section, or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative; *that it would be practically impossible to ascertain in what proportion the several parts should share with others in the expenses and receipts in which they participated;* and, finally, that to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses under the operation of the act within the limits of the State of Arkansas. * * * (*St. L. & San Francisco Railway* v. *Gill*, 156 U. S., 649, 657, 665.)

In the Minnesota case, Mr. Justice Brown, speaking for the court, said:

> *It was not even shown that the joint tariff fixed by the roads themselves upon coal was not disproportionately high as compared with*

rates upon other articles or as gauged by a proper classification. The difficulty with defendant's case is that it made no attempt to show the cost of carrying coal in carload lots, and that even in proving that the cost of transporting *all* merchandise exceeded the rate fixed by the commission on this coal, the interest upon bonds and dividends upon stock were included in operating expenses. The propriety of the first is at least doubtful; the impropriety of the second is plain. We do not intend, however, to intimate that the road is not entitled to something more than operating expenses. * * * True, it may be difficult to segregate hard coal in carload lots from all other species of freight and determine the exact cost to the company; but upon the other hand, the commission, in considering a proper reduction upon a certain class of freight, ought not to be embarrassed by any difficulties the companies may experience in proving that the rates are unreasonably low. * * *

In exercising its power of supervising such rates the commission is not bound to reduce the rates upon *all* classes of freight, which may perhaps be reasonable, except as applied to a particular article; and if, upon examining the tariffs of a certain road, the commission is of opinion that the rate upon a particular article or class of freight is disproportionately or unreasonably high, it may reduce such rate, notwithstanding that it may be impossible for the company to determine with mathematical accuracy the cost of

> transportation of that particular article as distinguished from all others. Obviously such a reduction could not be shown to be unreasonable simply by proving that, if applied to all classes of freight, it would result in an unreasonably low rate. It sometimes happens that, for purposes of ultimate profit and of building up a future trade, railways carry both freight and passengers at a positive loss; and while it may not be within the power of the commission to compel such a tariff, it would not upon the other hand be claimed that the railroads could in all cases be allowed to charge grossly exorbitant rates as compared with rates paid upon other roads, in order to pay dividends to stockholders. (*Minneapolis and St. Louis R'd Co.* v. *Minnesota*, 186 U. S., 257, 266, 268.)

In Covington, etc., Turnpike Co. v. *Sandford* (164 U. S. 578, 597) the court, speaking through Mr. Justice Harlan, said:

> * * * The legislature has the authority, in every case, where its power has not been restrained by contract, to proceed upon the ground that the public may not rightfully be required to submit to unreasonable exactions for the use of a public highway established and maintained under legislative authority. If a corporation can not maintain such a highway, and earn dividends for stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens upon the public. * * *

Noting then the inquiries that must be made in order to determine the application of a system of rates, the court further said:

> In short, each case must depend upon its special facts; and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling a public highway are, *as an entirety*, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating rates, exceeded its constitutional authority, and practically deprived the owner of property without due process of law. * * *

In *Interstate Commerce Commission* v. *Union Pacific R. R. Co.* (222 U. S. 541, 548) Mr. Justice Lamar, speaking for the court, said:

> * * * In the first place there was no appeal from the master's finding that—
>
> "The carriers concede that they are unable to determine the cost of this traffic, in and of itself; and that they are unable to say, with any satisfactory accuracy, whether or not they make a profit upon it; but they have all conceded that, in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed *for less than cost*."

> This concession, of course, does not cover the question at issue, but it does fix a starting point. It establishes an important fact in dealing with the difficult question of determining *what is a reasonable rate on a particular article.* Where the rates as a whole are under consideration there is a possibility of deciding, with more or less certainty, whether *the total* earnings afford a reasonable return. But whether the carrier earned dividends or not sheds little light on the question as to whether the rate on a particular article is reasonable. For if the carrier's total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing or for less than a reasonable rate. On the other hand, if the carrier earned no dividend, it would not have warranted an order fixing an unreasonably high rate on such article. * * * Too many elements are involved in fixing a rate on a particular article over a particular road to warrant reliance on such method of proof. The matter has to be determined by a consideration of many facts.
>
> In this case the commission had before it many witnesses and volumes of reports, statistics, and estimates, including the rates on lumber charged by other roads and those charged by these carriers on other classes of freight. * * *

Fair deductions from the foregoing cases lead to the following conclusions:

1. To pass upon an entire system or tariff of rates, constructed by a carrier, it must appear from evi-

dence, and be determined, that the rates on all classes of traffic are relatively reasonable to the public, there being no presumption of reasonableness in their favor.

2. That the particular traffic in controversy is not unduly burdened by being charged unreasonably high rates in order to take care of and reimburse the company for carrying another class or classes of traffic at unreasonably low rates, or to protect the company against an unprofitable investment.

3. That the ascertainment of the value of the entire transportation property of a carrier is only required, and should only be made, when a system or tariff of rates, *as a whole*, is under consideration.

To allow a railroad company to avoid an investigation into the reasonableness of its entire tariff of rates while claiming that the reduction of a single rate, or rates upon a particular traffic so reduces its gross revenues that it will not earn a fair return upon the present value of its property, would work grave injustice; it would leave the public wholly unprotected against the effect of unreasonably low rates upon favored traffic and compel it to pay unreasonably high rates upon other traffic to make up the loss.

We do not fail to recognize the fact that a railroad company can voluntarily carry freight at less than reasonable rates and possibly less than the cost of service, if it chooses to do so, but it can not do this and at the same time insist that other classes of

freight shall be charged unreasonably high rates in order to make up the loss on the favored traffic; the company must bear such losses. This principle is sustained by the authorities cited.

If these premises are correct, we are brought to a consideration of the question: Can the court determine that the rates charged by the petitioner upon all classes of traffic are reasonable? This question, we submit, has been answered in the negative by this court in *Texas & Pacific Railway Co.* v. *Abiline Cotton Oil Co.* (204 U. S. 426, 444). The general principle is stated by the Chief Justice in that case as follows:

> After deciding that the orders of the commission were not entitled to be enforced because of errors of law committed by that body, this court declined to consider the question of the reasonableness *per se* of the rates as an original question; in other words, the correction of the established schedule without previous consideration of the subject by the commission. It was pointed out that by the effect of the act to regulate commerce it was peculiarly within the province of the commission to primarily consider and pass upon a controversy concerning the unreasonableness *per se* of the rates fixed in an established schedule. It was therefore declared to be the duty of the courts, where the commission had not considered such a disputed question, to remand the case to the commission to enable it to perform that duty, a conclusion wholly incompatible with

> the conception that courts, in independent proceedings, were empowered by the act to regulate commerce, equally with the commission, primarily to determine the reasonableness of rates in force through an established schedule.

The principle was asserted in the *Illinois Central* case and the *Union Pacific* case, and in *Procter & Gamble* v. *United States* (225 U. S. 282, 297). In the latter case the court, speaking through the Chief Justice, said:

> Originally the duty of the courts to determine whether an order of the commission should or should not be enforced carried with it the obligation to consider both the facts and the law. But it had come to pass prior to the passage of the act creating the Commerce Court that in considering the subject of orders of the commission, for the purpose of enforcing or restraining their enforcement, the courts were confined *by statutory operation* to determining whether there had been violations of the Constitution, a want of conformity to statutory authority, or of ascertaining whether power had been so arbitrarily exercised as virtually to transcend the authority conferred although it may be not technically doing so. (*Int. Com. Comm.* v. *Union Pacific R. R.*, 222 U. S. 541, 547; *Int. Com. Comm.* v. *Ill. Cent. R. R.*, 215 U. S. 452.)

In the case at bar the appellant was permitted, over the objections of the appellees, to enter upon a valuation of its property, show its gross and net

receipts and the supposed effect thereon of the order reducing the rates on citrus fruits and vegetables. This appellee offered no evidence as to the valuation of the property (1) because it was irrelevant to the issue in controversy and (2) because no appropriation for the valuation of the property has been made by Congress.

Until Congress or the Interstate Commerce Commission shall establish a system or tariff of rates for the appellant, there will be no "body of rates" that can be considered as an entirety, and as to which a presumption will exist that all the rates in the tariff are reasonable. Until such a tariff exists with which the court can deal, we respectfully submit there is no jurisdiction to institute an original inquiry as to the value of the entire property of the appellant; that such valuation, under the conditions existing in this case, is irrelevant and improper, and that this respondent should not be called upon to defend such an issue; that confiscation can not be predicated of a reduction of the total revenues of the carrier caused by an order reducing a single rate or rates upon a particular traffic.

If this conclusion be sound, it disposes of all the assignments of error in this case which have reference to the valuation of the appellant's property, for the purpose of determining whether its net revenues pay a fair return upon the present value of its property.

II.

Did the commission, in the proceeding in which the order was entered, conform to statutory authority?

Counsel for appellant, in the brief filed herein, seek to convey the impression that they were misled by remarks and communications by Commissioner Prouty. The copy of the brief furnished to this appellee does not give the pages of the record relied upon to support these charges. In every case where the record page is given, and in all cases so far as we are able to discover from a careful review of the record, these remarks and letters referred to by counsel—with the exception of the proposal to value the property heretofore quoted—were made or written prior to January, 1911, and they had reference to the procedure and investigation being made in one of the first two cases; they do not apply to or in any manner affect the procedure in this case in which the order complained of was entered. They have no bearing upon, or relevancy to, the issue under consideration.

As before noted, the appellant appeared by its counsel on March 2, 1911, and took a very active part in the case; statements were made by counsel regarding the company, its financial affairs, its traffic, etc.; counsel was invited by the commissioner to produce any and all evidence it desired to produce before the commission upon the issue involved—the issue being clearly and fully stated; printed briefs and oral arguments were made on behalf of appellant.

No evidence was submitted by the appellant or arguments made tending to show that the rates discussed and proposed were unreasonable *per se*. There was no denial that the rates would produce a large profit over and above the cost of the service. The whole controversy on behalf of the appellant was, that to reduce the rates on fruits and vegetables would so affect its gross revenues as to prevent the railroad from earning a return upon the total value of its *entire line*. In other words, counsel insisted that the rates should not be determined with reference to reasonableness *per se*, but upon a revenue basis. If the revenues of the company were to be reduced, it was then, as now, contended that the net revenues would not constitute a fair return upon the value of its entire property. This was and is the only issue in this case—are single rates or rates upon a particular traffic to be determined upon a revenue basis?

It is not contended by appellee that the general financial condition of a railroad company, as shown by its sworn reports to the commission, should not be considered in determining rates. This is one of the facts which is considered by the commission, and was considered and fully discussed in this case. (Record, pp. 29, 30.) The ability of appellant to carry this traffic upon the same terms with the other defendant carriers was also discussed and determined; (Record, pp. 30 and 31), but the giving of due and proper consideration to these general conditions shown by the reports and to special conditions which may

be shown is a very different proposition from the one insisted upon by appellant that, to determine a single rate or rates upon a particular traffic, the revenue basis must be adopted and an extended and expensive program of valuation be entered upon to determine the present value of its railroad property.

In determining the reasonableness of a single rate, or rates upon a particular traffic, all pertinent facts should be considered, but in the final analysis a claim of confiscation must, in such cases, be determined by an inquiry as to whether the rate established is below the cost of service with some profit. In this case there is a large profit above the cost of service.

It may be admitted, by way of argument, that the statute does not authorize the commission to establish an unreasonably low rate, if by that is meant a confiscatory rate, but to be confiscatory it must be an unlawful rate. An unlawful rate has been defined by this court.

In *Southern Railway Co.* v. *St. Louis Hay & Grain Co.* (214 U. S., 297, 301) this court, speaking through Mr. Justice Brewer, regarding a single service, said:

> * * * The commission found that $2 or $2.50 per car, or approximately 1 cent per hundred pounds, was the actual cost to the railway company.
>
> We are unable to concur with the commission. If the stopping for inspection and reloading is of some benefit to the shipper and involves some service by and expense to the railway company, we do not think that the latter is limited to the actual cost of that

> privilege. It is justified in receiving some compensation in addition thereto. A carrier may be under no obligations to furnish sleeping or other accommodations to its passengers, but if it does so it is not limited in its charges to the mere cost, but may rightfully make a reasonable profit out of that which it does furnish * * * it *is entitled to receive some compensation beyond the mere cost for that which it does.*

In the *Burnham, Hanna, Munger* case, speaking through Mr. Justice McKenna, the court said:

> Two grounds for injunction are alleged. One is that the new rates are confiscatory. There is no proof whatever that the rates which the commission prescribed as just and reasonable are not sufficient to pay the cost of handling that traffic, to cover that traffic's full proportion of maintenance and overhead expenses, and to return to the carrier an ample net profit. * * * For the purpose of this hearing, therefore, it must stand as an agreed fact that the present reduction is neither directly nor indirectly obnoxious to the charge of taking private property without just compensation. (*Interstate Commerce Commission* v. *Burnham, Hanna, Munger Dry Goods Co.*, 218 U. S., 88, 111.)

In the *North Carolina Rate* case the court, speaking through Mr. Justice White, now the Chief Justice, said:

> In a case involving the validity of an order enforcing a scheme of maximum rates, of course the finding that the enforcement of

such scheme will not produce an adequate return for the operation of the railroad in and of itself demonstrates the unreasonableness of the order. Such, however, is not the case when the question is as to the validity of an order to do a particular act, the doing of which does not involve the question of the profitableness of the operation of the railroad as an entirety. The difference between the two cases is illustrated in *St. Louis, &c., Ry. Co.* v. *Gill* (156 U. S., 649) and *Minneapolis & St. L. R. R. Co.* v. *Minnesota* (186 U. S., 257). * * * The power to fix rates, it is urged, in the nature of things is restricted to providing for a reasonable and just rate, and not to compelling the performance of a service for such a rate as would mean the sustaining of an actual loss in doing a particular service. To hold to the contrary, it is argued, would be to admit that a regulation might extend to directing the rendering of a service gratuitously or the performance of first one service and then another and still another at a loss, which could be continued in favor of selected interests until the point was reached where by compliance with the last of such multiplied orders the sum total of the revenues of a railroad would be reduced below the point of producing a reasonable and adequate return. But these extreme suggestions have no relation to the case in hand. * * * (*Atlantic C. L. R. R. Co.* v. *North Carolina Corporation Commission*, 206 U. S., 1, 24, 25.)

If this elucidation of the law is right, then it follows that a petition claiming that a single rate, or a rate upon a particular traffic, fixed by the commission, is confiscatory must allege that the rates fixed are below a sum which represents the cost of service and some profit; otherwise the petition fails to present a cause of action.

The rates established by the order in this case are lawful rates—that is to say, they are far in excess of the cost of the service. The commission therefore acted within its statutory authority and established lawful rates.

III.

Did the commission, in making the order in question, exercise its power so arbitrarily as virtually to transcend the authority conferred by the statute?

The appellant fails to point out any ground, not already discussed, for its claim that the commission acted arbitrarily in this case. Due notice was given of all the proceedings; full opportunity was given for the presentation of evidence, briefs, and arguments. But counsel for appellant in their brief (p. 23) say:

> In the decision itself the commission stated that after the hearing (and without notice to the appellant) it received ex parte statements from parties which unquestionably affected its decision.

No reference is given to the record as authority for this statement and we do not find anything that

warrants it. In the opinion, beginning at the bottom of page 26 (Record), answering an assertion by appellant's counsel, that the existing "relation of rates was satisfactory," it is stated:

> It is also true that upon this hearing no particular locality was complaining of its rates as compared with other localities; but since the conclusion of the hearing the commission has received, in several instances, petitions from different points of production, insisting that the rates from those points were too high as compared with other points, and the proposed schedules of the Florida commission suggest a much greater reduction from present rates at more distant than at near-by points.

The railroad commission of Florida was representing the whole State, the shippers from every locality, and was endeavoring to further their interests. It was true that no particular locality in the State was independently represented. The State commission and the association represented every locality and sought to secure a distance scale of rates that would insure equality to all localities.

The fact that petitions were filed after the hearing is referred to in the report to meet the assertion of the appellant that there was no complaint about the existing relation of rates which warranted the railroad commission of the State in pressing for a reduction in the rates and a uniform scale of rates throughout the State. There was no evidence taken under these pe-

titions, and nothing stated in them is referred to or relied upon in reaching the conclusions in the case.

The report of the commission (Record, p. 22) states:

> Numerous complaints were made to the railroad commission of Florida that these fruit and vegetable rates up to the base points were excessive, and that commission, for the purpose of informing itself, held investigations in all parts of the State where these defendants operate.
>
> It found a general feeling among growers that the rates were extravagant, for the reason apparently that the industry under the present rates was not sufficiently profitable. From its investigation it reached the conclusion, as stated by its chairman, that the rates were too high.

The complaints of shippers and particular localities were thus brought to the attention of the commission.

The evidence taken in March, 1911, in addition to the evidence taken in the former hearings, stated in the reports of these hearings, supports the order in controversy. If there was any conflict, it was for the commission to determine the issue of fact.

The order was not wholly satisfactory to either side, but the commission was of opinion that the decision reached was just and equitable to all concerned. As the administrative tribunal, charged with the duty of enforcing the act to regulate commerce, the commission fixed what it believed to be reasonable rates for the future upon the roads of all of the defendants;

and we respectfully submit that there being substantial evidence to support the order, the appellant has failed to sustain its contention that the commission exercised its authority arbitrarily.

IV.

Questions of fact.

There are many questions of fact discussed in appellant's brief which were presented to the Commerce Court which we do not discuss in this brief for the reason that we understand, from the opinions cited, this court will not consider questions of fact. For instance, considerable space is given by appellant's counsel to the question whether the main line of the appellant stops at Miami or Homestead. Upon the financial books of the company the line is divided into two parts:

(1) The "main line" originally operated from Jacksonville to Miami, a distance of 366 miles; there were several branches or feeders, among which was the one to Homestead, known as the "Cutler extension," running a distance of 28 miles into one of the most fertile spots in Florida. The total mileage of the main line and branches is over 400 miles; the total cost, as reported to the commission, was about $15,000,000. This was the amount stated at the hearing as its cost by Mr. St. Clair-Abrams. (Record, p. 1565.) A special examination of these accounts was made by the commission after this suit was brought and several improper items were found charged to the property account as cost of the road.

Mr. Flagler, the sole owner of the road, had taken an issue of bonds of the par value of $6,000,000 at 50 cents on the dollar, and there was in the property account $3,000,000 "for loss on sale of bonds," two other entries, "Interest on capital stock," amounting to nearly $1,000,000. (Record, p. 878.) These items did not represent any cash expended and aggregated about $4,000,000. Since the hearing before the commission a considerable amount has been spent by way of betterments to the main line. The actual cost of this 400 miles of the road, therefore, does not exceed $14,000,000. (Record, p. 879.)

(2) "The Key West extension." This extends from Homestead to Key West, a distance of 128 miles. It is treated in a separate account by appellants; the rates over it are higher by permission of the Florida statute and it has cost about $175,000 a mile, or over $22,000,000.

The main line serves the fruit and vegetable growers upon the east coast of Florida; the over-sea extension does not create any new connections of account, and will not until the Panama Canal is completed. The boat lines originally established by appellants from Miami to Key West and Cuba served those points before the extension was built. Key West is now served by rail and Cuba by a shorter water line from Key West.

The fourth assignment of error raises an immaterial question of fact, namely, whether the appellant decided to build its Key West extension prior to 1905. In 1893 the board of directors passed a formal resolu-

tion locating its line generally from Miami to Key West. No action was ever taken under this resolution. After this resolution was passed, the railroad established its terminals at Miami with boat lines to Key West and Cuba. About $2,000,000 was expended upon docks and the harbor at Miami for this service. Its railroad depot was placed on the water front convenient to the boats. An extensive contract was entered into with the United States for the improvement of the harbor. The magnitude of this improvement showed clearly that the southern terminus of the road was to be at Miami, with a branch to Homestead.

In 1902 the Congress of the United States provided for the construction of the Panama Canal, and later (1904) made appropriation for the construction of the canal. On May 3, 1905, the Legislature of the State of Florida passed an act "to encourage and secure the construction of a line of railway from the mainland of Florida to Key West." The act referred to the construction of the Panama Canal, and the importance of securing "the State a fair proportion of the traffic passing through the said canal." On June 6, four days after the passage of this act, a special meeting of the stockholders of the appellant was called and the meeting was held on July 10 "for the purpose of considering the construction of a line of railroad from the mainland of Florida to Key West, under and pursuant to the act of the Legislature of Florida." (Record, pp. 896 to 902.) Referring to the Florida act, the resolution

adopted recited that in "the judgment of the stockholders of the Florida East Coast Railway Co. it is to the interest of said company to extend the railroad of said company from the mainland of Florida to Key West and to construct the same under and pursuant to the act of the Legislature of Florida hereinbefore recited." The result of all this has been the practical abandonment of its docks at Miami for the purposes intended; its depot is to be moved back in Miami upon what was the branch line running to Homestead but is now the main line to Key West. This action shows conclusively that there was no intention of building to Key West until after the Panama Canal was started. Mr. Parrott, the president of the road, referring to prospective business for the extension, said: "But our main dependence is out of the Panama Canal, which we had first supposed we were dealing with, but as the proposition has grown it looks as though it was very largely out of the island of Cuba." (Record, p. 731.)

No money could be obtained in the financial world to build this road, but no one doubts that Mr. Flagler had a perfect right to expend $22,000,000 building this remarkable railroad if he saw fit to do it; but, we submit, he has no right to charge unreasonable rates to the fruit and vegetable growers of Florida in order to earn a return upon such an investment.

The net income of the appellant for the fiscal year ending June 30, 1911, was $1,272,908.10. With the exception of $100,000, in round figures, this was all earned upon the main line and its branches.

The revenue from the main-line traffic will pay over 8 per cent upon the cost of that part of the road and nearly 4 per cent upon the cost of the entire line to Key West.

V.

Findings of the commission.

The order in this case is found on pages 33, 34, and 35 of the record. It applies the distance scale of rates established and in effect for pineapples upon the Florida East Coast Railway to the transportation of citrus fruits and pineapples from all points upon the three lines of railroad in Florida to Jacksonville. In reference to vegetables, the commission found that—

> Taking everything into consideration we are of the opinion that the vegetable rate in carloads should be per crate approximately 70 per cent of the orange carload rate per box when under ventilation and 80 per cent under refrigeration. The less-than-carload rate may exceed the ventilated carload rate by 2 cents per standard crate up to distances of 300 miles, beyond that by 3 cents. (Record, p. 29.)

Upon these general findings the order establishes certain carload and less-than-carload distance rates upon pineapples, citrus fruits, and vegetables under refrigeration and under ventilation (Record, p. 35). These maximum rates were fixed by the commission and enforced against all three of the defendants in this investigation.

The commission in its report says (Record, p. 30):

> Taking that [financial condition of the Florida East Coast Railway] into account, to-

> gether with all the other facts and circumstances bearing upon the matter, we are of the opinion that the rates suggested for the Seaboard Air Line and the Atlantic Coast Line in the State of Florida would be just and reasonable to apply upon the railroad of the Florida East Coast Railway Co. Those rates are already in effect upon pineapples and do not involve any extraordinary reductions from the rates on vegetables and citrus fruits, which that company has voluntarily established.

The commission further says (p. 31):

> We are then of the opinion that those rates upon pineapples, citrus fruits, and vegetables, which would result from the application of the distance tariff given below upon the lines of the Florida East Coast Railway Co., the Atlantic Coast Line Railroad Co., and the Seaboard Air Line Railway from points in Florida up to Jacksonville, when for beyond, would be just and reasonable, that they ought not to be exceeded for the future, and that the present rates of those carriers are unjust and unreasonable to the extent that they exceed such rates.

It will be observed that the commission finds these maximum rates to be reasonable upon each railroad concerned and also finds the rates prevailing upon these railroads, respectively, unreasonable to the extent that they exceed the maximum rates fixed by the commission. The result of this order was to establish reasonable and uniform gathering distance

rates upon pineapples, citrus fruits, and vegetables from every producing district in the State of Florida to Jacksonville, the base point, when applied to interstate traffic. All undue discrimination between producing localities as to these gathering rates was thereby precluded.

As to the conditions of the traffic and its former findings the commission said:

> There is nothing in this record which would call for a reconsideration of our former conclusion if exactly the same question were now before us.
>
> There is, however, a material difference in one respect between now and then. When we decided the original case, rates up to the gathering point were in all cases any quantity, and in most instances this was also true from the base point to destination. In our first order in No. 1168 we established carload rates upon citrus fruits and pineapples from base points to destination which were lower than less-than-carload rates and we suggested that carload rates be also established from base points on vegetables. This suggestion was not accepted by the carriers, and as a result supplemental proceedings were brought asking the commission to order the establishment of carload rates upon vegetables, which was done. (*Florida Fruit & Vegetable Shippers' Protective Asso.* v. *A. C. L. R. R. Co.*, 17 I. C. C. Rep., 552.)
>
> There are therefore in effect to-day by the order of this commission carload rates upon both fruits and vegetables from base points.

> No carload rates, or at least none which need be mentioned, are in effect up to the base point upon the Atlantic Coast Line and the Seaboard Air Line. None were in effect upon the Florida East Coast until our order established such rates upon pineapples. Since then that company has filed carload and less-than-carload rates upon citrus fruits and vegetables, but these rates are higher than those named by us for pineapples. (Record, p. 24.)

The commission had held several hearings upon different branches of the complaint. In this investigation it sought to take into view the producers and the traffic upon all the lines represented and to arrive at *reasonable* uniform distance rates to the base point. This was fair to the railroads and fair to the shippers; it would prevent any discrimination.

The commission had power to take this broad view.

> The outlook of the commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it therefore are complex and difficult, the means of solving them are as great and adequate as can be provided.
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> *Interstate Com. Com.* v. *Chi. R. I. & P. Ry.* (218 U. S., 88, 102–103).
>
> *Interstate Com. Com.* v. *Chi. B. & Q. R. R. Co.* (218 U. S., 113).
>
> In determining these mixed questions of law and fact the court confines itself to the ultimate question as to whether the commission

acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling.

Interstate Com. Com. v. *Union Pac. R. R.* (222 U. S., 541, 547).

The findings of the commission are made by law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience. (*Ill. Cent. R. R. Co.* v. *I. C. C.*, 206 U. S., 441.)

Cincinnati, etc., Ry. v. *Interstate Commerce Commission* (206 U. S., 142, 154).

Interstate Commerce Commission v. *Union Pacific Railway Company* (222 U. S., 415, 446).

The commission proceeded and acted strictly within the powers conferred by the statute.

Government regulation of rates would become a farce if, under the conditions appearing in this record, this order should be set aside on the ground that it would deprive the appellant from earning a larger return upon its investment.

We respectfully submit that the order of the commission should be sustained and the decision of the Commerce Court affirmed.

Respectfully submitted.

CHARLES W. NEEDHAM,
Assistant Solicitor,
Interstate Commerce Commission.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1912. No. 858.

FLORIDA EAST COAST RAILWAY Company, *Appellant,*

v.

UNITED STATES, *Appellee,*

INTERSTATE COMMERCE COMMISSION, *et al.*, *Intervening appellees.*

APPEAL FROM THE COMMERCE COURT.

BRIEF FOR THE UNITED STATES.

The order of the Commission in the first proceeding was complied with and is not in controversy here. July 3, 1907, a complaint was filed before the Interstate Commerce Commission in No. 1168, attacking the rates and certain regulations covering the shipment of citrous fruits, vegetables, and pineapples from Florida. After answers were filed and a full hearing, at which a vast amount of evidence was taken, the Commission, on June 25, 1908, filed its report. *Florida Fruit & Vegetable Shippers' Protective Association* v. *Atlantic Coast Line Railroad Co., et al.*, 14 I. C. C. R. 476.

The rates were considered under two divisions, viz, 1, a gathering charge from the points of origin to what were known as Florida base points, of which Jacksonville was the principal one; and, 2, rates from the base points to points of final destinations in other States, the sum of the two rates constituting the through interstate charge. The rates on oranges, vegetables, and strawberries from the basing points were reduced, but the gathering rates from the points of production to the basing points were not disturbed; nor were any of the pineapple rates or the rates for refrigeration disturbed. (See Appendix.)

The order of the Commission in the second proceeding was complied with and is not in controversy here. Two supplemental petitions were subsequently filed and, after notice and further hearings, the Commission, on June 12, 1910, rescinded that part of the report of June 25, 1908, which found that the local rates of 25 cents from points of production to base points were reasonable, and the unreasonableness of those rates were made the subject of further investigation. (R., 1187.) Subsequently, February 8, 1910, the Commission filed its second report in Nos. 1168 and 2566. *Florida Fruit & Vegetable Shippers' Protective Association* v. *Atlantic Coast Line Railroad Co., et al,* 17 I. C. C. R., 552.

In that report the rates on pineapples and citrous fruits from points of production on the Florida East Coast Railway Company were ordered reduced, and the proportional rates on citrous fruits and pineapples from the basing points to northern and eastern desti-

nations were likewise ordered reduced. (See Appendix.)

The order in controversy. Thereupon, the Railroad Commissioners of Florida filed complaint No. 3808, further attacking the rates on citrous fruits and vegetables from points of production in the State of Florida to the basing points. The commissioners also intervened in supplemental complaint No. 1168, and in that intervention attacked the same rates as in No. 3808. Answers were filed, and, after notice and full hearings, at which the question of the reasonableness of the rates on citrous fruits, vegetables, and pineapples from points of production to Jacksonville and other base points was fully and completely examined into, the Commission, on November 6, 1911, filed its third report and entered the order in controversy. (R., 33, 34, 35; see, also, Appendix.)

The orders in the first two proceedings were complied with by the appellant and all of the other carriers, and are not in controversy here. No complaint was ever made in any court by any carrier attacking the regularity of any order of the Commission in either of those proceedings (R., 861, 862), and no complaint was ever made in any court by any carrier, except the appellant, attacking the regularity of the order of the Commission in the last proceeding.

I.

The Interstate Commerce Commission accorded to appellant the full hearing provided by law and did not act arbitrarily.

The report of the Commission in Nos. 1168 and 3808, upon which the order in controversy is based, discloses that the railroad commissioners of Florida had held investigations in all parts of that State in which any of the railroad companies operated. (R., 22, 23.) In that proceeding all the gathering charges in the entire State of Florida, except the rates on pineapples then in force upon the line of the appellant, were under attack. The proceeding was instituted by, or had the support of, the railroad commissioners of Florida, whose duty it was, under the statute, to inquire into the reasonableness of interstate rates; and if, after investigation, it should be of opinion that any of the rates were unreasonable, to apply to the railroads operating within the State for a modification of the tariff; and, if unsuccessful, to institute proceedings before the Interstate Commerce Commission.

The present proceedings were against all of the gathering roads in the State and were instituted for the purpose of unifying the gathering rates throughout the State. The Interstate Commerce Commission gave notice of further hearings, and with the records in the old cases before it, it took about 500 additional pages of evidence.

The records of the Commission in the various proceedings which resulted in the present order were

offered in their entirety before the Commerce Court and received. They embraced over 2,000 pages, and were not printed for the use of the Commerce Court according to the rules.

At all times the appellant was represented before the Commission by its present counsel, who was assisted by the officers, traffic officials, and other agents of the appellant, and the records before the Commission consist largely of matter offered by the appellant. The various reports of the Commission (R., 19) and the opinion of the Commerce Court so indicate. (R., 1623.)

In the instant case, the appellant has stipulated out of the record all of the evidence taken by the Commission in the first two proceedings, and has further stipulated that the court may refer to the reports of the Commission as correct statements of the issues and facts of those proceedings. (R., 1649, 1650.) The statements attributed to counsel and the Commissioner taking the evidence in December, 1909, that the appellant's rates were not involved in those proceedings, are not in the present record, and it is beyond the power of the appellant to attack the present order by reason of anything which occurred in those proceedings. More than that, the alleged statements are of no consequence, or counsel would not have stipulated them away. The absence from the opinion of the Commerce Court of any reference to the alleged statements is conclusive that they were not seriously pressed at the hearing. The Commerce Court, however, reviewed fully the

various proceedings before the Commission. (R., 1633, 1634, 1635.) It is now beyond the power of the appellant to shake the presumptions in favor of the validity of the order. *Chicago, Rock Island & Pacific Railway Co.* v. *Interstate Commerce Commission*, 218 U. S., 88, 110, 111.

The order is also effective against the Atlantic Coast Line and the Seaboard Air Line companies, who were also parties to the proceedings before the Commission. Those companies appeared before the Commission with the appellant, occupied similar positions, had similar interests at stake, and were accorded the same treatment. During the season of 1910 the Atlantic Coast Line handled 2,901,936 boxes of citrous fruits and 1,500,000 miscellaneous crates; total, 4,401,936. The Seaboard Air Line handled 780,387 boxes of citrous fruits and 1,391,335 miscellaneous crates; total, 2,171,722. The appellant handled 669,584 boxes of citrous fruits, 600,000 crates pineapples, and 1,890,000 miscellaneous crates; total, 3,159,584. Thus, in the volume of traffic handled, the appellant stands between the Atlantic Coast Line and the Seaboard Air Line. (R., 913.)

Neither the Atlantic Coast Line nor the Seaboard Air Line joined in the petition before the Commerce Court. They forthwith published the rates and have since maintained them without protest. (R., 861, 862.) While at all times cognizant of the litigation, which, if successful, would inure to their benefit, neither company has ever intervened.

II.

The rates prescribed by the Commission are not confiscatory of the property of the appellant.

As to the charge that the rates prescribed by the Commission are confiscatory, it appears that appellant's railroad consists of two sections: (1) The line and branches from Jacksonville to Homestead, consisting of 506.47 miles, or the main line; (2) the line from Homestead to Key West, consisting of 122 miles, or the over-sea extension; total, 628.47 miles. (R., 904, 909.) It is so treated on the books of the company. (R., 1638.) The capitalization of the entire mileage consists of $10,000,000 of first-mortgage bonds, $21,000,000 [1] of second-mortgage bonds, and $5,000,000 of stock; total, $36,000,000 (R., 9); of this $15,000,000 applies to the main line and $21,000,000 to the over-sea extension. The entire capital stock is, and always has been, owned by Mr. Henry M. Flagler, and, as set forth by appellant in its application for a supersedeas, "no stockholders' meeting was necessary to determine his action."

For the year ending June 30, 1911, the net operating revenue from the main line was $1,272,908.19. (R., 904.) That sum, according to the showing made by appellant, would more than pay a dividend of 8 per cent on the capitalization of $15,000,000 for the main line (R., 1638); and, if so applied, would more than pay a dividend of 4 per cent on the total bonded

[1] When the petition was filed the total of the second-mortgage bonds was $20,000,000.

debt of $31,000,000 for the entire system. The president of the appellant company testified that the ordinary rate of interest on railroad stocks and bonds is less than 8 per cent, and runs from 4 to 5 and 6 per cent. (R., 758.)

For the year ending June 30, 1911, the entire operating revenue for the over-sea extension from Homestead to Knights Key was $97,787.94. From points between and including Jewfish Creek and Knights Key, the total revenue from tonnage amounted to $6,162.03 for the same period. For the period from January 22, 1912 (the date of the opening of the Key West Extension), to March 10, 1912, the total revenue at Key West from tonnage was $787.57. (R., 1068.) It appears conclusively, and the Commerce Court held, that the over-sea extension does not pay operating expenses, and the main line is burdened with the deficit. (R., 1640.)

As to the Key West Extension, it may be said that it consists of approximately 122 miles of railroad built from Homestead southward over the Florida Keys to Key West. The cost was approximately $175,000 per mile, or about $21,000,000. By the preamble of the act of the legislature authorizing its construction, it is recited that "Whereas the construction of the Panama Canal renders it desirable and important for the proper development of the State of Florida, and to secure the State a fair proportion of the traffic passing through the said canal, that a line of railroad should be con-

structed from the mainland of the State to the island of Key West." (R. 896.)

Appellant's witnesses testified before the Commerce Court that Long Key was a fishing ground, and the only thing that stands in the way of develment on the keys is lack of people; that Key Largo, the largest of the keys, is a little higher than the others; that the wind blew the water and spray clear over (the keys) until it killed the foliage, and caused the leaves to turn blue and drop, as if a blight had been through them; that the blight from salt water prevents profitable development, and that is the reason the keys are not populated. (R. 442, 560.)

It is conceded that the handling of the cars from the North into southern Florida, the loading of the cars, the handling of the citrous fruits, vegetables and pineapples, and the shipping thereof from southern Florida to the North, were not even among the considerations which resulted in the construction of the over-sea extension, which was built southward. (R. 764, 765.)

The reasonableness of the rates paid by the growers and shippers of southern Florida, whose freight is transported northward, should not be tested by a return of 8 per cent, or by what may or may not be a reasonable return, on the fair value of 122 miles of railroad built southward over the barren keys at a cost of $175,000 a mile, and which does not pay operating expenses, for the purpose of securing business

from the Panama Canal, not yet opened, or for some other purpose, though confessedly not for the use of these shippers.

In *Covington & Lexington Turnpike Road Co.* v. *Sandford*, 164 U. S. 578, it is said (596):

> It can not be said that a corporation is entitled, as of right, and without reference to the interests of the public, to realize a given per cent upon its capital stock. * * * When the question arises whether the legislature has exceeded its constitutional power in prescribing rates to be charged by a corporation controlling a public highway, stockholders are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just for the public. * * * The public can not properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. * * * If a corporation can not maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens upon the public.

In *Interstate Commerce Commission* v. *Union Pacific Railroad Co.*, 222 U. S., 541, it is said (p. 549):

> Where the rates as a whole are under consideration, there is a possibility of deciding, with more or less certainty, whether the total earnings afford a reasonable return. But

> whether the carrier earned dividends or not sheds little light on the question as to whether the rate on a particular article is reasonable. For, if the carrier's total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing, or for less than a reasonable rate. On the other hand, if the carrier earned no dividend, it would not have warranted an order fixing an unreasonably high rate on such article. * * * The reasonableness of rates can not be proved by categorical answers, like those given, where a witness may, in terms, testify that the goods were worth so much per pound, or the services worth so much a day.

On the subject of confiscation, the absence from the case of the Atlantic Coast Line and the Seaboard Air Line companies is again significant. As to them the rates have been published and maintained without protest as just and reasonable rates for the service rendered. If the appellant erred in its judgment in building a railroad over the barren keys, the growers and shippers of the State of Florida who ship in the opposite direction should not be called upon to pay the bill.

Findings of fact conclusive.—All questions sought to be raised are foreclosed by findings of fact beyond the power of any court to reexamine, and the Commerce Court, after examining the voluminous evidence before the Commission (R., 1633), was right in holding—

> This court, however, is not authorized to review the Commission's determination of

> disputed questions of fact, made after a full and fair hearing, on proper notice, unless its power has been exercised in an arbitrary or unreasonable manner or in violation of petitioner's constitutional rights.

The record is entirely void of a single distinct and dominant proposition of law which the Commission rejected, and the exact influence of which, in its decision, could be estimated. *Illinois Central Railroad Co.* v. *Interstate Commerce Commission*, 206 U. S., 441, 457.

On the authority of the numerous previous adjudications of this court in similar cases, the judgment should be affirmed.

WM. MARSHALL BULLITT,
Solicitor General.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

JANUARY, 1913.

APPENDIX.

FIRST PROCEEDING.

ORANGES.

No. 1168. Florida Fruit & Vegetable Shippers' Protective Association *v.* Atlantic Coast Line Railroad Company et al. 14 I. C. C. R. 476.	(3,000,000 boxes, 80 pounds each, 1907-8, 12,000 carloads.) June 25, 1908, on complaint and answers duly filed, the following rates were considered:	Rail and water rates per box from basing point (Jacksonville) to..... All-rail rates to..... From shipping point (Arcadia) rate to basing point, Jacksonville..... Rates per box in carload lots from basing point to..... From shipping point (Arcadia) rate to basing point, Jacksonville..... After full consideration the foregoing all-rail rates for carload lots from basing points, minimum 300 boxes, were ordered reduced to..... Less than carload rates to remain 10¢. per box higher than carload rates to all points. The rates from basing points to Ohio River crossings were left undisturbed, with the suggestion that the carriers readjust them in accordance with certain suggestions of the commission.

	Balto.	Phila.	N. Y.	Boston.
Rail and water rates per box from basing point (Jacksonville) to.....	35¢.	35¢.	35¢.	40¢
All-rail rates to.....	47.5¢.	48.5¢.	50.5¢.	58.5¢.
From shipping point (Arcadia) rate to basing point, Jacksonville.....	25¢.	25¢.	25¢.	25¢.

	Ohio River.	St. Louis.	Chic.	Buff.	Pitts.
Rates per box in carload lots from basing point to.....	40¢.	54¢.	59.6¢.	60.8¢.	60.4¢.
From shipping point (Arcadia) rate to basing point, Jacksonville.....	25¢.	25¢.	25¢.	25¢.	25¢.

	N. Y.	Balto.	Phila.	Boston.	Pitts.	Buff.
After full consideration the foregoing all-rail rates for carload lots from basing points, minimum 300 boxes, were ordered reduced to.....	40¢.	43¢.	44¢.	51¢.	51¢.	51¢

VEGETABLES.

(In crates or barrels.)

Florida Fruit & Vegetable Shippers' Protective Association *v.* Atlantic Coast Line Railroad Company, et al. 14 I. C. C. R. 476.

June 25, 1908, on complaint and answers duly filed, the following rates were considered:

Rail and water rates on crates, 50 lbs. each, from basing point (Jacksonville) to	Balto.	Phila.	N. Y.	Boston.
	30¢	30¢	30¢	35¢
Reduced to	25¢	25¢	25¢	30¢

All-rail rates to	N. Y.	Boston.	Pitts.	Buff.	Chicago.
	43¢	53¢	31⅞¢	32. 4¢	33½¢

The all-rail rates were found to be reasonable.

Cabbages per bbl., 120 lbs. each, rail-and-water rate, Jacksonville to	Balto.	Phila.	N. Y.	Boston.
	54¢	54¢	54¢	63¢
The cabbage rate was reduced per bbl. to	44¢	44¢	44¢	52¢
Potatoes per bbl. 185 lbs. each, rail-and-water rate, Jacksonville to	60¢	60¢	60¢	70¢
Potatoes per bbl. reduced to	50¢	50¢	50¢	60¢

All rail rates, any quantity..... [Balto., Phila., N. Y.[Found reasonable. Boston. Reduced to not to exceed 6¢ per crate of 50 lbs. and 12¢ per bbl. of 100 lbs. over rate to N. Y.

Carload rates established upon vegetables per crate 50 lbs. from base points to	Balto.	Phila.	N. Y.	Boston.
	33¢	34¢	36¢	42¢

Florida Fruit & Vegetable Shippers' Protective Association v. Atlantic Coast Line Railroad Company, et al. 14 I. C. C. R. 476.

June 25, 1908, on complaint and answers duly filed, the following rates were considered:

PINEAPPLES.

Rail and water rates per box from Florida base points should be the same as oranges to.	Balto. 35¢.	Phila. 35¢.	N. Y. 35¢.	Boston. 40¢.
All rail rates per box, any quantity, should be the same as on oranges to	Balto. 47.5¢.	Phila. 48.5¢.	N. Y. 50.5¢.	Boston. 58.5¢.

Carload rates, min. 24,000 lbs., should be the same as on oranges to	N. Y. 46¢.	Balto. 43¢.	Phila. 44¢.	Boston. 51¢.	Pitts. 51¢.	Buff. 51¢.

The less than carload rates may exceed the carload rates by 10¢ per box.

STRAWBERRIES.

	Crates.	Per crate.	Revenue.
Present rates, carloads	200	$1.80	$360
Reduced to	175	1.80	270

SECOND PROCEEDING.

No. 1158. Florida Fruit & Vegetable Shippers' Protective Association *v.* Atlantic Coast Line R. R. Co. et al. (Lines north of Ohio River not parties.)

No. 2566. Florida Fruit & Vegetable Shippers' Protective Association *v.* Alabama & Vicksburg Ry. Co. et al. (Lines north of Ohio River were parties.)

Feb. 8, 1910, on complaints and answers duly filed, the following rates were considered.

No. 2566.

PINEAPPLES.

Proportional rates from Florida base points upon citrous fruits and pineapples, carloads, minimum 300 boxes, reduced in accordance with the following table:

Point.	Present rates.	Future rates.
	Cents.	*Cents.*
Chicago	59.6	53
Indianapolis	56.0	50
Cleveland	58.8	53
Milwaukee	62.0	55
St. Louis	54.0	50
Columbus	56.0	50
Minneapolis	77.6	66
St. Paul	77.6	66
Kansas City, Mo	71.6	62
Omaha	79.6	66
Cedar Rapids	72.8	62

Local rates from base points may exceed the proportional rates established by 3 cents per box in case of citrous fruits and pineapples.

Mixed carloads of fruits and vegetables were permitted, both the rate and the minimum to be that of the article which takes the highset rate.

No. 2566.

VEGETABLES.

By the original report the Commission suggested that carload rates should be established on vegetables which should not exceed the following in cents per crate to.....

Balto.	Phila.	N. Y.	Boston.
33¢.	34¢.	36¢.	42¢.

With corresponding rates to various interior destinations, the minimum to be 20,000 pounds or less. The carriers established carload rates 3 cents higher than than those suggested, minimum 20,000 pounds.

The rates so established by the carriers on vegetables, under ventilation, min. 420 crates, 21,000 lbs., were reduced to.....

Balto.	Phila.	N. Y.	Boston.
30¢.	37¢.	39¢.	45¢.

Under refrigeration, min. 350 crates, 17,500 lbs., to

Balto.	Phila.	N. Y.	Boston.
36¢.	37¢.	39¢.	45¢.

PINEAPPLES.

No. 1168.

Number of crates transported to market from Florida by the F. E. C. R. from 1905 to 1909 as compared to importations from Cuba, viz:

Year.	Florida.	Cuba.
1905	370 688	2,325,011
1906	574,035	2,302,189
1907	577,806	1,726,559
1908	640,829	2,322,304
1909	1,110,547	3,170,390

The average rate for the transportation of pineapples from the point of production to Jacksonville of 24.6 cents was readjusted and the average cost of transporting pineapples in carloads, crates, 80 lbs., min. carload, 300 crates, to Jacksonville reduced to about 21 cents, in accordance with the following table:

No. 1168. Florida Fruit & Vegetable Shippers' Protective Association *v.* Atlantic Coast Line R. R. Co. et al. (Lines north of Ohio River not parties.)

No. 2566. Florida Fruit & Vegetable Shippers' Protective Association *v.* Alabama & Vicksburg Ry. Co. et al. (Lines north of Ohio River were parties.)

Feb. 8, 1910, on complaints and answers duly filed, the following rates were considered.

Distance (miles).	Rate.	
	Carload.	Less than carload.
	Cents.	*Cents.*
Up to 40	9	12
Over 40 and up to 60	10	13
Over 60 and up to 80	11	14
Over 80 and up to 100	12	15
Over 100 and up to 120	13	16
Over 120 and up to 140	14	17
Over 140 and up to 160	15	18
Over 160 and up to 180	16	19
Over 180 and up to 200	17	20
Over 200 and up to 220	18	21
Over 220 and up to 240	19	22
Over 240 and up to 260	20	23
Over 260 and up to 280	21	24
Over 280 and up to 300	22	25
Over 300 and up to 325	23	26
Over 325 and up to 350	24	27
Over 350 and up to 375	25	28
Over 375 and up to 400	26	29

This table produces a through rate from the point of production in Florida to Chicago of 74 cents, as compared with the through rate of 73½ cents from the point of production in Cuba.

From Havana to Chicago the F. E. C. R. maintains a rate of 66½ cents.

Local rates from base points may exceed the proportional rates established, by 2 cents per crate in case of vegetables.

Mixed carloads of fruits and vegetables were permitted, both the rate and the minimum to be that of the article which takes the highest r te.

60 lbs. Florida Fruit & Vegetable Shippers' Protective Assn. v. Atlantic Coast Line R. R. Co. et al. No. 3885. Railroad Commission of the State of Florida v. Seaboard Air Line Ry. and Atlantic Coast Line R. R. Co.	Report and order in controversy. Nov. 6, 1911, on complaint and answers duly filed, and after full hearings, the following rates were considered: Carriers: Atlantic Coast Line, Seaboard Air Line, Florida East Coast Railway Co.	Previous proceedings before the Commission reviewed and considered and the entire rate structure reconstructed. Rates established for the transportation of pineapples, citrous fruits, and vegetables, in carload quantities, 21,000 lbs. minimum for pineapples and citrous fruits; 21,000 lbs. minimum for vegetables under ventilation; and 17,500 for vegetables under refrigeration, from points of production to Jacksonville, when destined for points beyond. Boxes, 80 lbs. in case of pineapples and citrous fruits, and 50 lbs. in case of vegetables.	The following mileage scale to apply to all traffic, viz:

Distance (miles).	Pineapples and citrus fruits.		Vegetables.		
	Carload.	Less than carload.	Under refrigeration.	Carload.	Under ventilation.
			Carload.		Less than carload.
Up to 40	9	12	7	6	8
Over 40 and up to 60	10	13	8	7	9
Over 60 and up to 80	11	14	9	8	10
Over 80 and up to 100	12	15	10	8½	10½
Over 100 and up to 120	13	16	10½	9	12
Over 120 and up to 140	14	17	11	10	13
Over 140 and up to 160	15	18	12	11	14
Over 160 and up to 180	16	19	13	11½	14½
Over 180 and up to 200	17	20	14	12	15
Over 200 and up to 220	18	21	14½	13	16
Over 220 and up to 240	19	22	15	13½	16½
Over 240 and up to 260	20	23	16	14	17
Over 260 and up to 280	21	24	17	15	18
Over 280 and up to 300	22	25	18	15½	18½
Over 300 and up to 320	23	26	18½	16	19
Over 320 and up to 340	24	27	19	17	20
Over 340 and up to 360	25	28	20	18	21
Over 360 and up to 380	26	29	21	18½	21½
Over 380 and up to 400	27	30	22	19	22
Over 400 and up to 420	28	31	22½	20	23
Over 420 and up to 440	29	32	23	20½	23½
Over 440 and up to 460	30	33	24	21	24
Over 460 and up to 480	31	34	25	22	25
Over 480 and up to 500	32	35	25½	22½	25½

Office Supreme Court, U. S.
FILED.
JAN 15 1913
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. ~~950~~ 383

FLORIDA EAST COAST RAILROAD COMPANY,
APPELLANT,

vs.

UNITED STATES, RESPONDENT; INTERSTATE COMMERCE COMMISSION, APPELLEES.

BRIEF

Of the Intervening Appellees, Florida Fruit and Vegetable Shippers' Protective Association and East Coast Fruit and Vegetable Growers' Association.

A. A. BOGGS,
Counsel for Florida Fruit and Vegetable Shippers' Protective Association.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No.

FLORIDA EAST COAST RAILROAD COMPANY, APPELLANT,

vs.

UNITED STATES, RESPONDENT; INTERSTATE COMMERCE COMMISSION, APPELLEES.

BRIEF

Of the Intervening Appellees, Florida Fruit and Vegetable Shippers' Protective Association and East Coast Fruit and Vegetable Growers' Association.

The issues presented on this appeal seem, upon examination, to reduce themselves to those presented by assignments numbers 1 and 2; that the court erred in holding that the Commission had power to fix the rates complained of, and that the rates are confiscatory. The 10th and 11th, assign-

ing error on the dissolution of the temporary injunction and on the dismissal of the bill, are merely the conclusions which must follow the sustaining of either of the first two contentions.

The 3d to the 9th assignments, inclusive, attack the opinion of the court instead of its decree, and address themselves to the argument stated by the court in support of its conclusion rather than to the conclusion itself.

Immateriality of Assignments.

It is unnecessary to argue the fallacy of this method of attack. The issue here is not whether this court will adopt the reasoning of that below, but whether the record supports its conclusion. Thus we might grant, for the sake of argument, that the main line of the petitioner's road does not end at Homestead and that its net revenues are less than 8 per cent on its investment, as in the 3d assignment; that the petitioner decided to construct its extension to Key West prior to 1902, as in the 4th; that the Interstate Commerce Commission was not justified in disregarding the value of the extension, as in the 5th; that there was no evidence before the Interstate Commerce Commission that conditions in 1911 were different from those in 1908, as in the 6th; that there was evidence to justify the court in holding that the extension produced an increase of traffic on the main line, as in the 7th; that there was no material increase in carload shipments as a result of the reduced rates from points of origin, as in the 8th; that the rates fixed by petitioner did not *increase* the burden on shippers on the main line from Jacksonville to Homstead; even if all this be true, yet the record shows that the rates on fruits and vegetables over petitioner's line were very high in comparison with those charged by other carriers, and that they put a heavy burden on shippers of this territory who are unable to meet the competition of other sections enjoying more reasonable rates

(14 I. C. C., 480; Beckwith, p. 1517); that they are higher than the rates voluntarily fixed by petitioner on lumber and other commodities which cost petitioner as much or more to handle (Beckwith, p. 1559); that the rates fixed by the Commission will yield a ton-mile earning of 21.78 mills (Burnside, pp. 906-908), and that the cost of the service rendered by the carrier is not more than 5 mills per ton-mile (Kirtland, p. 462); that petitioner is transporting Cuban pineapples from Key West to Jacksonville on an expedited schedule at a rate varying from 7.7 mills to 10 mills per ton-mile (rate 16 to 21 cents per crate of 80 pounds, according to destination, distance 522 miles), and is not losing money at it (Kirtland, pp. 471-537); that the cost to petitioner of its entire main line and branches from Jacksonville to Homestead, embracing all the territory producing fruits and vegetables, and paying the rates involved, did not exceed $15,000,000 (17 I. C. C., 564); that this line has a net earning from operation of $1,400,000; that the rates complained of would still allow the carrier more than double its average freight earning on other commodities (Beckwith, p. 1561); that the petitioner's rate on citrus fruits and vegetables was abnormally high (Beckwith, 1558); that the extension made no material contribution to the gross earnings of the road (St. Clair-Abrams, 1568); that it is in no way concerned in the fruit and vegetable traffic (Parrott, 765), and that appellant's previous rates were abnormal in their rapid increase for distance (17 I. C. C., 564).

We believe the record sustains every conclusion of the Commerce Court and the reasoning by which those conclusions are sustained, but regardless of that, we insist that the determination of the Commission on the facts cannot be shaken by a criticism of the reasoning by which the Commerce Court affirmed it.

I shall, therefore, not endeavor to follow counsel for appellant along the path of his assignments, but will confine myself first to a brief review of the case to show conformity to procedural requirements, and, second, to a discussion of

appellant's over-sea extension in its bearing on the question of confiscation as applied to these rates, the other features of the case being covered by other counsel.

History of the Case.

It is probable that few cases have been decided by the Interstate Commerce Commission upon a more comprehensive record than the one at bar. On the 2d day of March, 1911, Mr. Commissioner Prouty sat to take testimony in Jacksonville in two cases, No. 1168 (Florida Fruit and Vegetable Shippers Protective Association *vs.* Florida East Coast Railway Company, supplemental petition, Railroad Commissioners of Florida, intervenors) and No. 3808 (Railroad Commissioners of Florida *vs.* Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Company).

As stated by Commissioner Prouty at the opening of the hearing, these cases brought into issue the rates generally on fruits and vegetables from producing points in Florida to base points. This hearing resulted in a combined record in the two cases exhibited here on pages 1510 to 1620, the portions applicable to the case against appellant occupying pages 1512, 1516-1527, 1531-1542, 1551-1570, and 1606-1608, or forty-four pages in all.

But this is only a fraction of the entire record before the Commission. The record already made in case No. 1168 and the entire record in case 2566 were stipulated in, thus adding some 2,500 pages, to say nothing of copious exhibits in both cases, and the entire series of annual reports on file with the Interstate Commerce Commission. It thus becomes apparent that the evidence, the sufficiency of which to sustain the Commission's order is in question, is not confined to the hearing of March, 1911, but includes every material fact relevant to these issues and contained in this great composite mass. It will perhaps be necessary to call attention to some of the facts brought out in this record, not so much to discuss their weight

as evidence, the determination of which is the province of the Commission, as to disprove the assertion of appellant that the finding of the Commission was without evidence to support it.

Florida's Rate Disadvantage.

Perhaps the most salient fact revealed is the universal discrimination in rates against Florida producers of fruits and vegetables as compared with their competitors. In regard to oranges, for example, the Commission says in its original report on case No. 1168 (14 I. C. C., 480), "considering the all-rail movement in the territory north of the Potomac and east of Buffalo and Pittsburg, it seems certain that the actual rate paid by California fruit is less per box than Florida, although the distance is twice as great." The through rate upon which the Commission based this criticism was that from Arcadia, Florida, a point on the Atlantic Coast Line Railroad. The rate from Miami was at that time 8 cents higher than the Arcadia rate, and from Homestead 16 cents higher, so that these points on the lower east coast could not ship their fruit far across the State lines in any direction without meeting competition from the distant Pacific coast at a heavy disadvantage.

In the vegetable markets conditions were almost as bad. The producers in southeast Texas and in southern Mississippi, although farther from the eastern markets than Florida, enjoyed far lower rates (14 I. C. C., 501). In fact, in the field of transportation it was an unvarying rule that Florida's competitors, no matter how distant from the market, or what might be their commodities, should have a substantial preference in rates.

It is against the policy of our law that such inequality should exist, unless in the given case there are other factors and conditions which render them necessary and unavoidable. The carriers, in the immense record compiled before the Commission, sought by testimony, exhibits and argument to show such circumstances and conditions, and, in the opinion of the Commission, they failed.

It is true that in the original case, No. 1168, the reasonableness of the rates of the appellant was sustained, but in that proceeding the shippers of this section were not represented, and in fact did not realize that the case was pending, only one grower from that great territory appearing (Record, 1151). But this case was retained by the Commission for further proceedings, and came to be taken up in connection with case No. 2566, into which its record was stipulated (17 I. C. C., 554). In the latter case, in which appellant was a party, rates from base points to market only were under consideration, and the Commissioner presiding informed counsel for this appellant at the first hearing that its rates were not involved. But the Commission was so impressed by the disastrous results there shown to be impending over these industries in the territory of appellant that of its own motion, by order dated January 12, 1910, it reopened the question of fruit and vegetable rates over the Florida East Coast Railroad from points of production to Jacksonville, and set a hearing in Washington in February, 1910, for testimony and argument, "with special reference, however, to pine apples" (Record, 1187).

In view of appellant's attempt to make it appear that there was a hiatus between the order of 1908, sustaining its rates, and that of December 2, 1911, reducing them, we desire to call the particular attention to this hearing of February 3 and 4, 1910, before the full Commission in Washington, which is of equal importance with that of March 2, 1911, as a foundation for the order complained of.

The Hearing of February, 1910.

The appellant was represented by its present leading counsel, by its president, and its traffic manager. The first step was to stipulate in, by mutual consent, the record in No. 2566. The shippers then introduced evidence covering 120 pages tending to show the heavy handicap of rate differentials against which Florida was struggling. The financial

condition of the road also was gone into, and it was proven that its capital was watered to the extent of some $4,000,000 (17 I. C. C., 564), and also that its net revenue was over 8 per cent on the actual cost of the property used in the service, and that they carried on business at a lower cost than the average of American railroads; also that their fruit and vegetable rates were vastly higher than their average on other commodities and than the rates they were willing to accept for the transportation of Cuban products.

Respondents put in testimony covering 158 pages in the endeavor to meet this evidence, and the case was then argued by counsel and submitted. See 17 I. C. C., 559, 561, 563, 565. Yet counsel for appellant, who personally conducted the case for his client at that hearing, says in his brief here, on page 13, that no additional testimony was offered, and again, on page 14, he says, "No additional testimony was taken at the hearing ordered for February 3, 1910," an error without apparent explanation or excuse.

On the case so submitted the Commission entered an order reducing appellant's rates materially on pineapples and citrus fruits, in fact establishing rates a trifle lower than those here under attack. Upon complaint by appellant, however, that, under the wording of the order setting the hearing, it was taken by surprise by the inclusion of citrus fruits, this order was modified and made applicable to pineapples only, and, so modified, was accepted and put into force by appellant, which shortly thereafter reduced its tariffs on citrus fruits and vegetables, but in so doing left them considerably variant from and higher than the rates established by the Commission on pineapples.

The Hearing of March, 1911.

A supplemental petition was now filed, asking that the rates on citrus fruits and vegetables be aligned with those on pineapples (Record, 1200), and upon the accumulated record of cases numbers 1168 and 2566, as well as upon that taken

at the hearing in March, 1911, the order complained of was based.

On page 18 of his brief counsel for appellant states that, at the hearing of March, 1911, the order reducing pineapple rates was taken as a conclusive argument why the rates on vegetables and citrus fruits should be reduced. This is misleading. The Commission had already adjudicated in case No. 1168, to which appellant was a party, that citrus fruits and pineapples should take the same rates, as a general rule (14 I. C. C., 503), and the same rule had been urged in argument by counsel for appellant in his brief filed with the Interstate Commerce Commission shown herein, where he says, "If the rate on pineapples is reduced, as required by complainant, this would have to be followed, necessarily, by a reduction to the same extent on vegetables, oranges, &c." (Rec., 1504). The Commission had also gleaned facts out of the record sufficient in its opinion to justify a like reduction on citrus fruits and pineapples in 1910, and had modified its order then made so as to withdraw citrus fruits from its effect only because appellant had complained that it was taken by surprise by the consideration of citrus fruits at the hearing of February 3 and 4 in Washington, and had not had an opportunity to present testimony on that point (Record, pages 1197, 1199). It was also abundantly established that the transportation of vegetables was carried on under similar conditions, and that from the shippers' standpoint the needs for reduction were the same. These matters were advanced by complainant not as conclusive, but as *prima facie* reasons for reduction, putting the burden on the carrier to show circumstances, if any existed, why a like rule should not be applied to citrus fruits and vegetables (Record, pp. 1512-1513). There is no showing in the record that the Commission adopted even this view, however.

It will be noted that complainant did actually introduce testimony at the hearing of March, 1911, and that the Commissioner presiding examined at length Mr. Beckwith, the vice-president and traffic manager of appellant, and elicited

from him an important array of facts as to cost of service, comparison of rates, expansion of traffic, and the general condition of the carrier, including the very significant admission that the cost of service was not greater for these commodities than for lumber and the like, upon which the carrier's rates voluntarily established were much lower (Record, p. 1559). See also pages 1517, 1558, 1561 and 1568 for significant and important facts brought out.

On pages 18 and 19 of his brief counsel for appellant recites a colloquy by which it would appear that at that hearing Mr. Commissioner Prouty limited the issue to the question of establishing carload rates, but an inspection of the record shows that these remarks had reference to case No. 3808, between the Railroad Commissioners of Florida and other carriers. They could have no application to the case against this appellant, which had already established a carload and less than carload tariff, as the Atlantic Coast Line and Seaboard Air Line had not, while the actual distance tariff of these other carriers was at the time far lower than the rates of appellant.

This is also true of the citation at the foot of page 20 of the brief, which, read in its context, applies entirely to case No. 3808, in which the Railroad Commissioners of Florida had in their petition suggested a schedule of rates, as they had not done in this case, and the *ex parte* statements which it is gratuitously intimated may have improperly influenced the Interstate Commerce Commission, evidently referred to these suggested rates of the Florida Commissioners, and not to those of appellant.

Again, on page 25 of his brief, counsel states that the Commission of its own accord reopened the case and declined to permit any additional testimony to be taken. We have already seen that about 300 pages of additional testimony were taken at the hearing immediately after the reopening, and the record shows that at the hearing of March 2, 1911, a great many important facts were brought out in the testi-

mony of Mr. Burr for the complainants and the statement of Vice-President Beckwith for appellant, portions of which have been previously cited. It shows, moreover, that no testimony offered by appellant was refused by the Commissioner presiding, who merely stated, as to certain testimony offered by both parties, that he thought it was unnecessary, that the record was already full, or that he did not believe that the Commission would be influenced by it. Certainly this offers no base for attack in the absence of a tender of evidence, a refusal, and an exception.

By the order complained of, the work of the Commission with reference to Florida rates was completed, and instead of the previous chaotic, arbitrary and excessive rates on Florida products there was established a logical system of distance tariffs covering the entire State of Florida from points of production to base points, equalizing those of appellant with those of the other Florida roads, and a comprehensive and consistent readjustment of rates from base points to markets. Of the two hundred defendants named in the several petitions, one hundred and ninety-nine obeyed the orders and established the new rates. There was but one recalcitrant, this appellant, which continued the fight, unmindful of the patent fact that if it should be so unfortunate as to be successful the rate differential, which would result in favor of the central and western portions of the peninsula, would inevitably, in the course of time, transfer the bulk of these industries, with their great tonnage of traffic, to other lines and ultimately kill the goose which lays the golden egg of its prosperity.

In view of all the foregoing, we contend that in the four distinct hearings making up this record, at all of which appellants were present, every procedural requirement was met and ample evidence was given to sustain the finding of the Commission.

The remaining point to which I will devote my attention is the question as to whether, as a matter of law, appellant is entitled to maintain high rates on the main line of Flor-

ida in order to provide for the operating charges and deficits of its over-sea extension, and so to put a serious and possibly permanent burden on the Florida shippers and deprive the East Coast of the opportunity to compete on equal terms with the producers of the other parts of Florida and the United States, whose railroads have no such burden to support. For a clear presentment of this point it is necessary to examine briefly into the physical and industrial characteristics of the several portions of appellant's line.

Character of Appellant's Line.

The branches of this line may be dismissed with a few words. That from Jacksonville to Mayport is about 30 miles long; it connects the city with several bathing resorts on the coast near the mouth of the St. John's river, while those from Titusville to Sanford and from New Smyrna to Orange City Junction, both quite short, traverse territory producing citrus fruits, and to some extent vegetables, and not dissimilar in character from the adjacent parts of the main line.

The main line extends parallel to the Atlantic coast some 495 miles from Jacksonville to Homestead. From this point its extension traverses the coastal marshes for some 19 miles and then crosses to Key Largo, along which it runs for some 16 miles, and thence, using the small coral keys for stepping stones, to Key West, a distance of some 91 miles.

The line on the mainland is of normal construction, practically free from grades and curves, and, as shown by its reports, and by Burnside's Exhibit 3 (Record, p. 904), and by the valuation exhibits, of low cost of construction and economical operation, the ratio of operating expenses to gross revenue being 62 per cent, as against an average for the railroads of the United States of 65 per cent, and decidedly advantageous compared with the other lines doing business in Florida, while its loss and damage ratio is likewise low in proportion. After leaving the mainland, construction proceeds with increasing difficulty and expense

until the last 90 miles into Key West have reached the stupendous cost of $175,000 per mile, with much of its permanent structure incomplete.

For the northernmost 50 miles the territory traversed is comparatively unproductive, and population sparse outside the cities of Jacksonville and St. Augustine; then comes the Hastings potato belt, extending some 25 miles. At about 100 miles the citrus fruit belt may be said to begin, although there is some production north of there, and it extends to the end of the main line, with some breaks. At about 225 miles pineapples begin, and from this point south vegetables come in, and in increasing volume, until Dade county is reached, which produces between the stations of Fort Lauderdale and Homestead more fruits and vegetables than any three counties in the State combined. At Detroit, a station situated at the edge of the marsh two miles south of Homestead, this traffic ceases abruptly, as the Keys are rocky and waterless, and so subject to salt water overflows and salt spray in storms as to be unfit for any considerable planting. It has been contended in argument, and suggested by Mr. Kirtland, who has been for four years general freight agent on the road, that considerable production may be expected on these keys in the future; but it is admitted by that witness, and by Mr. Carter, the master of ways and structures of the road, whose acquaintance with the territory is older than that of Mr. Kirtland, that the population and cultivation of these keys has diminished in the last few years in spite of the coming of the railroad (Record, pp. 489, 560).

South of Detroit there is no freight traffic worthy of consideration, the gross revenues from this source for the fiscal year ending June 30, 1911, being only $8,411.00 (Burnside, 903). There is no interchange of commodities between the mainland and Florida and the West India Islands. It is thus apparent that the only portion of defendant's line in any way employed in or concerned with the business of the people of Florida is that portion extending from Homestead to Jacksonville.

Cost and Capitalization of Road.

This line, with its feeders and branches, exclusive of the over-sea extension, is carried in the capital account of the company at about $17,000,000. Of this, as pointed out by the Interstate Commerce Commission (17 I. C. C., 564), $4,000,000 is water. The actual cost to the company, up to the time of the proceeding before the Commission, was about $13,617,652, or about $28,000 per mile (Chambers Ex., p. 879).

No showing was made before the Commission as to the cost of reproduction, but appellant introduced evidence before the Commerce Court which might possibly sustain the court's finding of a present valuation of some $17,000,000, though this increase is based chiefly upon the rise of values of real estate, and includes several millions for property which is certainly not shown by the records to be presently in use for railroad purposes.

The net revenue for 1910, which is all properly credited to the mainland portion of the road, the extension earning less than nothing, was about $1,400,000, and in 1911, a year of almost unprecedented crop failure, it was $1,272,000, the average of the two years being about $1,350,000, which would pay about 8% interest on the reproduction, or nearly 11% on the actual cost of the property. The reduction complained of would amount to about from $130,000 to $150,000 per year, which would still leave the carrier's earnings over 7% on the reproduction value and over 9% on the cost of the property used in the service. Surely this forms no basis for a claim of confiscation, even if confiscation could be predicated upon a reduction on one or two commodities, a point which will be discussed by other counsel.

But the actual contention made is that appellant is entitled, as a matter of law, to earn a return on its entire investment, and it is expressly urged that the Commission is without power to go into the question as to whether that

extension was wisely or unwisely conceived and constructed—whether it serves the shippers, upon whose traffic its maintenance is charged, or whether it now performs, or is capable of performing, any economic service commensurate with its cost.

Other counsel will deal fully with certain issues raised by this assignment, and in order to avoid any unnecessary duplication I shall devote the remainder of this brief to the point last suggested.

Appellant Has No Right to Burden Traffic of Main Line to Support the Extension.

As stated by counsel for appellant, there is a dearth of authority on the point. Of the three cases cited by him on page 41 of his brief, the first deals with the question of rates of grain elevators and the second with the taxation of telegraph companies. The third supports our contention, as far as it goes, holding that where the cost to carrier cannot be kept within reasonable limits the misfortune must fall upon him; while the four cases cited on page 29 seem to deal with the question as to whether courts, at the suit of a stockholder, will interfere with the policy of the management of a railroad company as to extensions, etc., and other irrelevant issues.

There is abundant authority for the proposition that a carrier is not entitled to burden traffic in order to pay a return on property unwisely constructed through unproductive territory or improvidently managed.

Reagan *vs.* Farmers Loan & Trust Company, 154 U. S., 412.

Covington *vs.* Sanford, 164 U. S., 578.

M., K., & T. R. R. Co. *vs.* Interstate Commerce Com., 164 Fed., 646, 648.

In re Arkansas rates, 169 Fed., 720, 733.

Southern Pacific *vs.* Bartine, 170 Fed., 725, 767.

San Diego L. & T. Co. *vs.* Jasper, 189 U. S., 439.

The apposite passages of these cases are quoted in the brief of counsel for the Railroad Commissioners of Florida (pp. 15 and 16), and, to avoid duplication, I cite them merely by reference.

If the doctrine laid down in these cases is correct, the Commission not only may, but must, examine into the wisdom or unwisdom of the investment where the issue is made on the carrier's right to charge exceptionally high rates in order to pay dividends on it.

And if this question may be considered as to the whole of a railroad, why may it not as to a part? If the Commission may fix rates which are not compensatory to the carrier on the ground that his whole line is built through sparsely settled territory where the traffic is too small to bear the burden, why may it not take that into consideration as to a portion?

Appellant somewhat naively complains that it is deprived of the right to earn a return on the $25,000,000 which the extension by this time has cost. The controversy in no way affects the revenues or earnings of the extension, which transports no fruits and vegetables except those from Cuba, upon which it has voluntarily established rates less than half as high as those complained of. It would make no difference in the earnings of the extension whether the rate on these commodities is doubled or halved. The real trouble is that the extension is unable to earn its own operating expenses, to say nothing of a return on the investment, and the order of the Commission deprives the carrier of the power to confiscate the property of these producers, who do not use it, to meet the deficit.

Freight Rates Cannot be Divorced from Basis of Service.

The trouble with appellant's logic is that it gets entirely away from the underlying reason for freight rates. Freight is essentially compensation paid to the carrier by the shipper for service performed, and a reasonable freight rate means

the reimbursement of the cost to the carrier plus a fair profit, including a return on the value of the property employed by him in that service, the total net to exceed the fair value of the service to the shipper. This rule is consistent with every sound rate case in the books.

It has been found by both the Interstate Commerce Commission and the Commerce Court that the cost of the service here in question is very small in comparison to the rate. As revealed by Mr. Kirtland's admission as to the profitableness of the Cuban traffic, the rate fixed by the Commission appears to be nearly three times the ton-mile cost of the transportation service.

As indicated by the Commission in its opinions, the old rates seem to be in excess of the value of the service to the shipper, but even admitting, for the sake of argument, they were not so, the particular point now under discussion involves primarily the question of the property upon which the carrier is entitled to a reasonable return. The answer, which we submit in all confidence, is "not all property which may belong to the carrier, not upon any piece of railroad which the carrier may purchase or construct, but upon that property, and only that property which is employed in the service rendered." To tax the goods of the shipper for the purpose of paying the carrier a return upon property which is built and employed for other purposes, which the shipper does not use and cannot use, and which either transports no commerce at all or exclusively that of producers of other localities, is not compensation; it is confiscation, not of the property of the carrier, but of the property of the shipper. This is the precise issue here. The over-sea extension of the Florida East Coast Railroad is as foreign to all of the uses and purposes of the producer of Florida as if it were built across Bering Sea. It is as indifferent to his interests as the Pyramid of Cheops. It is connected with him in no earthly way except that, like a vermiform appendix, it hangs on the system of his transportation.

The division at Homestead is condemned as arbitrary, but the Commission recognized only a physical and incontrovertible fact. From Homestead north the Florida East Coast Railroad transports fruits and vegetables and other freight for the people of its territory; from Homestead south it carries nothing which they produce or consume. From that point north it is a railroad normal in its construction, active in its traffic and useful to the population of its territory; from that point south it is a hobby, which may some day vindicate its conception by performing transportation service of some kind, but which at present is performing no service for anybody except in the transportation of passengers and mails. From Homestead north it is a railroad across the land; from Homestead south it is a railroad across the sea. The division was made at that point by the hand of God when He divided the waters from the land.

As representative of the shippers of the east coast, I am here to say to the court that our people are willing to pay a liberal return upon every dollar invested by Mr. Flagler for their benefit; they do not complain against allowing him the benefit of the increment of value in his property which their labors have helped to create and to paying a reasonable return even upon the values so increased. They will pay compensation, but they refuse tribute, and they invoke the constitutional guarantees against the taking of their property to maintain other people's business.

There was a time when this section monopolized the markets of the country, and the high prices obtained for its products made the burden of rates light; but now, from Cuba, from Porto Rico, from California, from Texas, from Mississippi, and from the central and western portions of Florida competition presses hard. We can carry no handicaps. We must ride as light as our rivals or lose the race. Already the pineapple industry has shrunk to 50 per cent of its former volume and the production of citrus fruits and vegetables is threatened with the same fate. The Interstate Commerce

Commission has unanimously held our contention just. The Commerce Court has unanimously upheld the Commission, and, conscious of the justice of our cause, we submit it for final decision by this august tribunal, confident that it will not close for us the door of opportunity and permit the builder of the over-sea extension to defy Nature and astonish mankind at our expense.

Respectfully submitted,

A. A. BOGGS,
Counsel of Florida Fruit and Vegetable Shippers' Protective Association and East Coast Fruit and Vegetable Growers' Association.

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Supreme Court of the United States

OCTOBER TERM, 1912.

NO. 858

Florida East Coast Railway Co.
vs. Appellant.
The United States,
Respondent
Interstate Commerce Commission, et al.
Appellees.

On Appeal from the Commerce Court.

REPLY BRIEF OF APPELLANT.

At the time this Reply Brief went to press the attorney preparing it had not received all of the briefs of the appellees, but such as had been received appeared to be simply repetitions of the briefs submitted to the Commerce Court, but we submit not meeting the questions presented in the several assignments of errors discussed in the original brief of the appellant.

None of the briefs for appellees point out to this Court one word of testimony upon which the Commission based its decision that the rates which it declared reasonable in 1908 had become unreasonable in 1911, especially after the Florida East Coast Railway Company had voluntarily reduced these rates in July, 1910, and as a result it suffered a reduction of revenue of over $81,000.00 from vegetables alone. An examination of the testimony taken before the Commission at Jacksonville, Florida, March 2nd, 1911, shows that (pages 131-132 *et seq.* of unprinted testimony) Mr. Commissioner Prouty inquired of Mr. Beckwith, Vice President of the Company, whether or not the crops of fruits and vegetables had not enormously increased compared with ten years before, and he answered "Yes," and that he hoped there would be also an increase ten years later over what it was in 1911, and that he also expected there would be an increase in the passenger business. But this is not making rates based on existing business. In 1901 the fruit and vegetable business had not recovered from the disastrous freezes of 1894-1895, which had practically killed to the ground nearly every citrus tree in the State, and the succession of severe

winters following had also prevented a recovery of the vegetable industry in the State. To base rates on fruits or vegetables on probable increases in the face of the evidence as to the great fluctations in the volume of these crops, due to climatic causes, which must necessarily continue and over which the railroad company cannot exercise the slightest control, is, we submit, unjust and unreasonable.

Mr. Commissioner Prouty, representing the Interstate Commerce Commission, at the hearing in Jacksonville, Florida, said, referring to the decision in 1908 (page 1514 of this record):

> "Commissioner Prouty: I do not know how my associates may have viewed this matter before, but in my own mind it did not seem to me upon the former hearing that these railroads in Florida were earning at that time perhaps a fair income upon the investment; but it did seem to me that upon the rates which we approved, as the business developed, they would earn a handsome return upon their investment. Now, if we scale down the rates as fast as business develops, that time will never come."

On the same page of the record, discussing the same question and the same rate of 1908, Mr. Commissioner Prouty said:

> "That is what the Commission had in mind when it established these carload rates on pineapples on the Florida East Coast. Now, Mr. Beckwith thought that those rates were too low. Mr. St. Clair-Abrams thinks they are too low now, because they do not allow his road suffi-

cient revenue, and perhaps they do not today; but considering that business and the extent of it, and all the facts before us, we thought that year after year, good years and bad years, the road ought to accord to the shipper that rate because it was reasonable as rates go in other places, but we did not reach that conclusion altogether nor very largely upon an examination of the financial condition."

The briefs of the appellees not only fail to show upon what testimony the Interstate Commerce Commission acted in declaring unreasonable in 1911 the rates they declared reasonable in 1908 and rendering the opinion that they did not see how these roads could operate for a less price, but they also fail to explain upon what theory the Interstate Commerce Commission possessed the power to receive ex parte testimony or statements after the hearing in the case had closed without affording opportunity to the Florida East Coast Railway Company to meet these ex parte statements, or to cross-examine the persons making these statements, and use them as ground for further and drastic reductions. Was there due process of law in doing this? Did the appellant have its day in Court? Was not this act in direct conflict with all the adjudications of this Court that counsel have been able to find?

Are rates to be based, not upon the business existing at the time of making them, but upon speculative theories of what it may be in years to come? The language of Mr. Prouty admitting that the rates declared reasonable in 1908 do not perhaps allow the road sufficient revenue today must not be forgotten,

as the Commission subsequently reduced those very rates after a previous voluntary reduction while they admitted the conditions were unchanged. We are unable to imagine anything more unreasonable than this action.

Neither does any brief of the appellees explain the positive conflict between the decision of the Interstate Commerce Commission on one vital question and the opinion of the Commerce Court. The Interstate Commerce Commission solemnly affirmed the fact that between 1908, when it declared the existing rates reasonable, and 1911, when it declared the same rates unreasonable, the condition of the appellant's road was unchanged. The Commerce Court, without any evidence before it, says in effect that the Interstate Commerce Commission must have been mistaken, as the conditions could not have been the same to have warranted the further reduction in rates made. The effect of this conflict is in many respects amusing. The Interstate Commerce Commission says in its opinion that the conditions are unchanged but we reduce the rates. The Commerce Court says in effect that the Interstate Commerce Commission is mistaken, that the conditions must have been different and must have been changed or the reduction would not have been made. To sustain the reduced rates fixed by the Interstate Commerce Commission the Commerce Court has been compelled to hold that there must have been a changed condition and that there necessarily must have been evidence before the Interstate Commerce Commission to show a changed condition or the Inter-

state Commerce Commission could not reasonably have reduced the rates, and the Commerce Court has so held in direct conflict with the solemn opinion of the Interstate Commerce Commission without one word of evidence before it to show that there was any change whatsoever in the condition of the appellant's road, save that the condition was not as favorable for further reductions of rates than existed in 1908.

Neither do the briefs of the appellees sustain the contention of the Commerce Court that there is no evidence to show that the building of the extension has increased the passenger traffic of this road. We showed to the Court that for the fiscal year ending June 30th, 1909, soon after the extension to Knights Key had been put in operation, the passenger business of the road was $319,547.07, less than it was for the fiscal year ending June 30th, 1911, when the extension to Knights Key had been put fully in operation. We also showed (pages 1077-1078 of record) that the business for the fiscal year ending June 30th, 1912, up to March 14th, 1912, showed a decrease in freight earnings and an increase of passenger earnings. The testimony of Mr. Parrott (page 738 of record) shows that when the steamers ran three times a week from Miami to Havana they would leave Miami with forty, fifty, sixty, eighty or ninety passengers; that when they had an excursion (which necessarily meant reduced rates) they might run one hundred and fifty to one hundred and eighty passengers; that after the extension had been completed to Knights Key, with steamers running six days in the week, the boats would leave with from

one hundred and seventy to two hundred and forty passengers per day, exclusive of excursions. Taking the average number of passengers three times a week at sixty-five for each boat from Miami, or one hundred and ninety-five for the week, we have an increase to an average of two hundred and five passengers for each steamer or an average of one thousand, two hundred and thirty as against an average of one hundred and ninety-five, and this was still further increased after the road was completed into Key West on the 22nd day of January, 1912. For every effect there must be some cause. What else besides this extension could have produced such an enormous increase of the passenger business to and from Havana? And this is all the more noticeable (if the Court will permit us) from the fact that for the fiscal year ending June 30th, 1912, as shown by the annual report of the company, while the freight decreased 2.38% or decreased from $2,150,048.31 to $2,098,830.38, the passenger business increased 19.43% or from $1,465,230.91 to $1,749,973.65, or an increase of about $284,500.00; while, as shown on the exhibit (page 1098 of record) the passenger business for February, 1912, alone, increased $67,000.00 over the preceeding year, while the freight business decreased $22,986.00 below the previous fiscal year. For the fiscal year ending June 30th, 1909, the extension to Knights Key had not been long in operation, and consequently the increase of passenger business was small, but during the winter of 1909-10, it was in full operation and the number of boats had to be increased from three to six per week

to and from Havana. For the fiscal year ending June 30th, 1909, the entire passenger traffic of the road was $1,158,391.10. For the fiscal year ending June 30th, 1911, the passenger traffic had increased to $1,465,230.91, a gross increase of $306,839.81. For the fiscal year ending June 30th, 1912, the passenger traffic had increased to $1,749,973.65, being an increase of $284,742.74 over the preceding year, or an aggregate of $591,582.55 increase over the fiscal year ending June 30th, 1909, or more than 50% increase over the passenger business when the terminus of the line was temporarily at Miami, rendering necessary the doubling of the steamer service to Havana and each steamer carrying an average of four or five times as many passengers as when the line ran from Miami.

As an illustration (if the Court will permit it, although we admit dehors the record, but sustaining the contention of Mr. Parrot, the President and Mr. Kirtland of the Florida East Coast Railway Company) this winter a special line of steamers from Key West to Colon has been announced, and before the close of last year more than 1200 passengers had been booked for this trip, 99% of them from points North of Jacksonville and every one necessarily having to travel over the extension to Key West, and returning, while the bookings for Havana continue to increase, showing the immense benefit conferred upon the main line by this extension.

In the testimony offered by the Interstate Commerce Commission, a Mr. Burnside testified as an expert accountant (pages 853-4-5-6 of record) and

seems to have partly based his figures on percentages and by arbitrarily (we suppose under instructions from his clients) figuring the terminus of the road at Homestead. On cross examination, however, he had to admit that from Miami to Knights Key, for the fiscal year ending June 30th, 1911, the main line received a gross revenue of over $258,000.00 from this extension, but stated he had not ascertained the amount contributed by the extension to the passenger traffic. It is notable that Mr. Burnside made the freight earnings rather more than the appellant did.

AS TO THIRD ASSIGNMENT OF ERRORS.

None of the briefs of appellees meets the third assignment of errors. We submit that they fail to cite the evidence upon which the Commerce Court based the opinion that the main line of appellant's railroad ends at Homestead. Neither have they cited the evidence upon which the Court held that the net revenues on this alleged main line were, for the fiscal year ending June 30th, 1911, in excess of 8% on the present fair value of the property. To the extent that any valuation was attempted at all, it showed a valuation from the standpoint of appellees of about $17,000,000.00. In the brief for the Interstate Commerce Commission before the Commerce Court (page 40) they admitted an aggregate valuation of $17,041,950.49. Eight per cent on this would be, in round figures, $1,363,280.00. The net earnings of the road were only $1,317,000.00 for that fiscal year, of which over $25,000.00 represented

interest paid on money deposited. So that, as a matter of actual, cold-blooded fact, the entire net earnings, based on this valuation, would have been only $1,292,000.00, or less than 8%, and that, too, entirely ignoring the extension to Key West or Knights Key and the business brought to the balance of the main line by such extension.

FIFTH ASSIGNMENT OF ERRORS.

The appellees have utterly failed in any of their briefs to meet the objection raised on the fifth assignment of errors. The effect of the decision of the Commerce Court is that the extension from Homestead to Key West must earn, in its local business alone, enough to make it pay not only expenses but a fair profit on the cost of this extension, as the Interstate Commerce Commission is authorihed to disregard the value of this extension and the business accruing to the balance of the main line from it, in fixing rates from Jacksonville to Homestead|. As this extension has cost, up to the present time, some $20,000,000.00, then it follows as a matter of course that if this contention be sustained the capital expended on the extension is rendered permanently valueless, for as fast as this extension increases the business of the line from Homestead to Jacksonville the Interstate Commerce Commission will have the right to reduce the rates on so much of the main line, the more especially if present value is to be disregarded and the Plant Account alone considered. The effect would be to force the East Coast to operate the extension from Homestead to Key West as a sepa-

rate and distinct entity, to ignore it as a part of a continuing main line to deep water at Key West, and to permanently deprive the investor of the capital of one cent of profit on the investment. If this holding of the Commerce Court is sustained then it can be applied to any part of a road which of itself does not produce, in its local business, much revenue. Between Jacksonville and St. Augustine, a distance of 40 miles, the local business is very small, both in freight and passengers. Along the line of road are long stretches of territory for many miles which do not produce enough local business to pay the running expenses of a single train. If one portion of the main line of a road can be picked out to be ignored and the capital invested in it confiscated, why not another? These are pregnant matters which none of the appellees in their briefs have met and which we insist must be considered by this Court.

The brief of the Interstate Commerce Commission is simply a repetition of the brief presented to the Commerce Court and repeats the same one-sided statements peculiar to that brief. As an illustration (page 12 of the brief), counsel cites Mr. Kirtland, Traffic Manager of the Florida East Coast Railway Company, as giving the minimum cost of transportation at ½ cent a ton per mile and immediately fixes the profit of the East Coast at 12 mills per ton per mile. Mr. Kirtland simply gave the common estimate of the GreatTrunk Lines as to the actual cost of transporting freights generally and did not refer to the particular fruit and vegetable freight, for in addition to the cost of hauling (which

he referred to) was and is the cost to the East Coast of $5.00 per car for the hire of the particular cars needed for transporting fruits and vegetables, the additional cost of nearly 100 spurs and tracks into the groves and farms and the annual expense of maintaining the same, and the added cost of maintenance of tracks, ties, etc., none of which were embraced in Mr. Kirtland's answer, and all of which must be considered in arriving at a conclusion as to the reasonableness of a rate. All of these questions were discussed and considered in 1908 when the Interstate Commerce Commission held the higher rates reasonable and declared that the Commission could not see how the East Coast could transport these fruits and vegetables at a lower rate.

In the Arkansas Rate Case, cited by both appellant and appellees, 156 U. S. 649, *et seq.*, this Court held that the company would be entitled to relief if the rates fixed were such as to practically destroy the value of its property. The Commerce Court admitted that the effect of the rates fixed by the Interstate Commerce Commission would be to cause a reduction of $131,000.00 per annum in the revenues of the company, based upon the large yield in 1911 and which we showed fluctuated largely, and, to sustain the rate, held that the Commission was not required to consider the extension from Homestead to Key West in establishing rates, the effect of which was and is to completely destroy the value of the property of the company from Homestead to Key West. It must be borne in mind that in these Arkansas rate cases the companies had increased the

rate of freight, while the East Coast had not simply held to the rate declared reasonable in 1908 but had actually reduced those rates after the road had been extended to Knights Key and there had been a large increase of revenue from passenger traffic resulting therefrom. Necessarily, it is practically impossible (as the Court held in those cases) to ascertain the exact cost of transporting any particular article of freight, but the evidence in this case shows that it costs much more to handle fruit and vegetables than it does to handle non-perishable freight. For instance, the trains carrying fruits and vegetables are limited to 25 cars as against 45 to 60 cars carrying non-perishable freight. The speed of these fruit and vegetable trains approximate that of passenger trains and the consumption of fuel is greater. Furthermore, is the extra expense of the hire of a particular kind of cars and the expense of spurs and switches into the groves and farms; all these being in addition to the ordinary expense incurred in hauling non-perishable freight. It is therefore absolutely necessary to ascertain the entire earnings and expenses to determine whether or not the particular rate involving a large reduction of revenue is or is not confiscatory.

With the higher rate the fruit and vegetable industry prospered; the area of land put into cultivation increased, affected only by climatic conditions which, as is shown by the testimony, produced enormous fluctuations in production regardless of the extent of acreage.

If the right to earn a reasonable profit (which this Court has repeatedly affirmed) holds good in this case, then it was and is confiscation which would reduce the interest on $20,000,000.00 of bonds from 4% to 3% in 1911 and in 1912 to less than 2%. If the decision of the Commerce Court is sustained, the Florida East Coast Railway Company will have to refund to the shippers of fruits and vegetables something approximating in the neighborhood of $100,000.00, roughly estimated, for the fiscal year ending June 30th, 1912, or ½% of the interest of 2½% declared on the $20,000,000.00 of second mortgage bonds, reducing this interest to 2%. Is not this confiscation?

In the short time at the command of counsel preparing this reply brief it is impossible to discuss at any length the brief for the Interstate Commerce Commission. On pages 34, *et seq.*, in this brief, however, counsel attempts to argue that the Commission did not so arbitrarily exercise its power as to transcend the authority conferred by the statute. Now, let us see; neither the Interstate Commerce Commission nor the Commerce Court had any new evidence before it to show that the rates declared reasonable in 1908 and which were reduced voluntarily in 1910 had become unreasonable in 1911 by reason of any changed conditions on the Florida East Coast Railway. They decided the question in 1911 on the testimony given in 1908. The Interstate Commerce Commission decided that the conditions were unchanged; that while the aggregate business of the road had increased, its earnings had increased

to as great an extent. When, therefore, it ordered a reduction in these rates, did it not do so without evidence and was not this act the exercise of power so arbitrarily as to virtually transcend the authority conferred by the statute?

As with the brief of the Florida Railroad Commission, counsel has failed to point out the evidence upon which the Interstate Commerce Commission exercised its authority in making the reduction complained of.

In the brief for the State Railroad Commission of Florida it is contended, as it was before the Commerce Court, that because only particular commodities are affected and because we had not separated the intrastate from the interstate business, the Court could not consider the rate complained of. As it is very seldom a general revision of rates is made, if this proposition be correct, then all the different Railroad Commissions need do is to continue reductions of particular classes of freight, since if the entire business of a road is not to be considered because only particular classes of freight are affected it never would be possible for a railroad to obtain relief.

In the case of Mo. K. & T. Ry Co. vs. Love 177 Fed. Rep., page 493, this very same point was raised before Circuit Judge Hook, who granted a temporary injunction, and dissented from this view, saying on page 502: "Moreover the rates in question should properly be considered as a body and in connection with the other freight rates of the company not affected by the orders."

As regards the intrastate traffic, the testimony in this case shows that this is so small as to be almost negligible. Practically all of the fruits and vegetables produced on the line of the East Coast Railway are shipped from the point of production to other states, while practically everything used on the line of the road is brought from other states. In his testimony before Mr. Commisioner Prouty, in 1911, (page 1535 of the Record) Mr. Burr, Chairman of the State Railroad Commission, admitted that the intrastate traffic in fruits and vegetables was "a mere nothing as compared with the interstate." And this fact was further sustained by the testimony of Mr. Kirtland, General Freight Agent of the Florida East Coast Railway Company. It follows, therefore, that the contention of counsel in this regard is altogether untenable.

Again, Florida being a terminal state with its line of road entirely within the State of Florida, it has no through business. There is but little or no difference between the cost of its intrastate and that of its interstate business, and in this respect it differs materially from the two other principal roads in the State, viz.: the Atlantic Coast Line and the Seaboard Air Line Railway, each of which has lines running through six different states and does an immense through business. The great mass of the South-bound business on the East Coast originates at Jacksonville from freight delivered to it by other roads, while practically all of its North-bound business originates on its own line of road from Key West North.

THE ISSUES NOT MET.

The appellees have utterly failed in their briefs to meet a single substantial objection raised by the assignments of errors. They have failed to show wherein the Interstate Commerce Commission was vested by the law with the power to make the rate complained of in the face of the evidence offered at the hearing in 1908, and the lack of evidence in 1911, to show any changed condition of affairs which would render the rate declared reasonable in 1908 unreasonable in 1911, bearing in mind also the radical reduction of the same rates voluntarily made by the appellant in 1910.

(2) They have failed to show upon what law the Interstate Commerce Commission or the Commerce Court was vested with authority to determine that the extension from Homestead to Key West should not beconsidered in the making of rates or that there was any traffic along the entire main line which justified its construction.

(3) They have failed to show wherein the extension imposed a burden on the balance of the line from Homestead to Jacksonville when the testimony is undisputed and indisputable that after this extension had been completed, and notwithstanding its great cost, the rates on all classes of freights were reduced and the rates on the particular fruit and vegetable freights complained of had also been reduced 15% in the aggregate and a much larger percentage in the territory where the great mass was and is produced, and that, instead of the extension proving a

burden upon the balance of the line, its effect was to reduce those burdens and to enable the company to voluntarily make reductions in 1910.

(4) In not one of the briefs is any law or authority shown which warrants either the Interstate Commerce Commission or the Commerce Court to judicially condemn the construction of the extension from Homestead to Key West and to eliminate it entirely from consideration in the fixing of rates.

(5) In not a single brief of the appellees is any evidence cited to sustain the contention of the Commerce Court that the conditions in 1911 were any different from those existing in 1908.

(6) Not one of the appellees referred to the evidence showing the enormous increase of business from Key West to Havana as compared with the business done when the line of steamers ran from Miami to Havana. They have ignored the evidence that while the freight business, including the appellant's own freight (which amounted to over 5% of the gross) increased only some 20% between 1909 and 1912, that the passenger business of the road increased, during the same period of time, over 51%, of which less than ½% was on account of the appellant, and that after the extension was completed to Knights Key it became necesary to put on a daily line of steamers to and from Havana while at Miami three steamers per week were sufficient, and that the daily line carried four times as many passengers each trip from Knights Key as they did from Miami.

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CONCLUSION.

We submit in conclusion that not a single brief of the appellees explains why and upon what authority in law or in fact there has been this ruthless confiscation of then $16,000,000.00 and now $20,000,000 of values. There has been no explanation conflicting with that of the evidence offered by the appellant to show that the extraordinary increase in passenger earnings was caused by this extension. If this increase had not been followed by the great increase proven in the travel to and from Havana, there might have been some ground for the oipnion of the Commerce Court, but the evidence of this increase was before the Commerce Court and undenied and could not possibly have been caused by anything but this extension.

Respectfully submitted,

Mr. Wm. Mann

Richard Ryan

Attorneys and Solicitors for Appellant.



FLORIDA EAST COAST RAILWAY COMPANY *v.* UNITED STATES.

APPEAL FROM THE COMMERCE COURT.

No. 383. Argued January 15, 16, 1913.—Decided June 8, 1914.

The rule that a finding of fact made by the Interstate Commerce Commission concerning a matter within the scope of the authority delegated to it is binding and may not be reëxamined in the courts, does not apply where the finding was made without any evidence whatever to support it; the consideration of such a question involves not an issue of fact, but one of law which it is the duty of the courts to examine and decide.

The record does not disclose any evidence justifying the order of the Commission directing a reduction of rates which had been held to be reasonable by a prior order of the Commission.

In a proceeding against several railroads, testimony as to the condition of traffic on certain railroads does not tend to establish conditions on another road in regard to which no testimony is given and where the record shows essential differences between it and those roads in regard to which the testimony was given.

200 Fed. Rep. 797, reversed.

THE facts, which involve the validity of an order of the Interstate Commerce Commission establishing rates on citrus fruits and vegetables from points of production in Florida to exterior points of consumption, are stated in the opinion.

Mr. Frederick C. Bryan and *Mr. Alex. St. Clair-Abrams* for appellant.

Mr. Blackburn Esterline, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Bullitt* was on the brief, for the United States:

The investigations before the Interstate Commerce Commission into the rates on citrus fruits, vegetables, and pineapples from southern Florida to the north engaged the attention of the Commission for a number of years in several separate proceedings to which the appellant was a party. The Railroad Commissioners of Florida, in pursuance of their statutory duty and authority, instituted the present proceedings against all of the railroads in the State for the purpose of unifying throughout the State the gathering rates. The Interstate Commerce Commission, after bringing before it all the records in the previous investigations, gave notice of further hearings and took a vast amount of additional evidence. In all of those investigations the appellant was represented before the Commission by its present counsel, who was assisted by its officers, traffic officials and other agents, and the voluminous records before the Commission consist principally of matter which they offered.

The appellant has stipulated out of the record all of the evidence taken by the Commission in the previous proceedings. It has further stipulated that the court may refer to the reports of the Commission as correct statements of the issues and facts of those proceedings. The statements attributed to counsel and the Commissioner taking the evidence in December, 1909, that the appellant's rates were not involved in those proceedings are not in the present record. The alleged statements are of no consequence or counsel would not have stipulated them out. The absence from the opinion of the Commerce Court, which reviewed fully all of the evidence and the various proceedings before the Commission, of any reference to the alleged statements is conclusive that they were not seriously pressed at the hearing. It is now

beyond the power of the appellant to shake the presumptions in favor of the validity of the order. *Chi., R. I. & Pac. Ry. Co.* v. *Int. Com. Comm.*, 218 U. S. 88, 110, 111.

The order is also effective against the Atlantic Coast Line and the Seaboard Air Line companies. During the season of 1910, the Atlantic Coast Line handled 2,901,936 boxes of citrus fruits and 1,500,000 miscellaneous crates; total, 4,401,936. The Florida East Coast handled 669,584 boxes of citrus fruits, 600,000 crates pineapples, and 1,890,000 miscellaneous crates; total, 3,159,584. The Seaboard Air Line handled 780,387 boxes of citrus fruits and 1,391,335 miscellaneous crates; total, 2,171,722. In the volume of traffic handled the appellant stands between the Atlantic Coast Line and the Seaboard Air Line. They appeared before the Commission with the appellant, occupied similar positions, had similar interests at stake, and were accorded the same treatment. Those companies forthwith published the reduced rates and have since maintained them without protest. Neither company joined in the petition before the Commerce Court and, while at all times cognizant of the litigation which would inure to their benefit if successful, neither has ever intervened.

The present order of the Interstate Commerce Commission unified the gathering charges on citrus fruits, vegetables and pineapples throughout the entire State of Florida. The rates from the west coast, traversed by the Atlantic Coast Line and the Seaboard Air Line, are not contested. If the court annuls the present order of the Commission and allows the appellant to restore its former rates, a drastic discrimination will result, and the shippers on the east coast will be at an advantage over the shippers on the west coast.

Appellant's railroad consists of two sections: (1) the line and branches from Jacksonville to Homestead, consisting of 506.47 miles, or the main line; (2) the line over

the Keys from Homestead to Key West, consisting of 122 miles, or the Over-Sea Extension; total, 628.47 miles. The capitalization of the entire mileage consists of $10,000,000 of first mortgage bonds, $21,000,000 of second mortgage bonds, and $5,000,000 of stock; total $36,000,000; of this, $15,000,000 applies to the main line and $21,000,000 to the Over-Sea Extension. The entire capital stock is and always has been owned by a single individual and no stockholders' meeting was ever necessary to determine his action. The cost of the Over-Sea Extension was approximately $175,000 per mile, or about $21,000,000. The Keys are undeveloped, vegetation will not grow because of blight resulting from the salt water, and there is little or no population. The act of the legislature of Florida authorizing its construction recites that it is desirable and important to the State to secure a fair proportion of the traffic passing through the Panama Canal. It is conceded that the handling of the cars from the north into southern Florida, the loading of the cars, the handling of the citrus fruits, vegetables and pineapples, and the shipping thereof from southern Florida to the north, were not even among the considerations which resulted in the construction to the south of the Over-Sea Extension.

For the year ending June 30, 1911, the net operating revenue from the main line was $1,272,908.19. According to the showing made by appellant that sum would more than pay a dividend of 8 per cent on the capitalization of $15,000,000 for the main line, and would more than pay a dividend of 4 per cent on the total bonded indebtedness of $31,000,000 for the entire system. The ordinary rate of interest on railroad stocks and bonds is less than 8 per cent, and runs from 4 to 5 and 6 per cent. The reasonableness of the rates paid by the growers and shippers of southern Florida, whose freight is transported northward, should not be tested by a return of 8 per cent, or by any per cent, on the fair value of 122 miles of railroad built

southward over the barren Keys at a cost of $175,000 per mile, and which does not pay operating expenses, for the purpose of securing business from the Panama Canal, not yet opened, or for some other purpose, though confessedly not for the use of those shippers. *Covington Turnpike Co.* v. *Sandford*, 164 U. S. 578, 596; *Int. Com. Comm.* v. *Un. Pac. R. R. Co.*, 222 U. S. 541, 549.

On the subject of confiscation the absence of the Atlantic Coast Line and the Seaboard Air Line companies from the case is again significant. As to them the rates have been published without protest and maintained as just and reasonable rates for similar transportation services. The railroads of those companies were built upon lands open to development where traffic may be secured. If the appellant erred in its judgment in building a railroad at such enormous cost over the barren Keys, into the Atlantic Ocean, the growers of the State of Florida who ship in the opposite direction should not be called upon to pay the bill

Mr. Charles W. Needham for the Interstate Commerce Commission:

The order does not violate the provisions of the Constitution of the United States guaranteeing due process of law and requiring that just compensation be paid for property taken for public use.

Confiscation cannot be predicated on a reduction of total revenue of the carrier caused by an order of the Commission reducing a single rate or rates upon a particular traffic.

The Commission, in the proceeding in which the order was entered, conformed to statutory authority.

In support of their contentions, see *Florida Shippers' Protective Assn.* v. *Atl. Coast Line R. R. Co.*, 14 I. C. C. 476; *S. C.*, 17 I. C. C. 552; *Den* v. *Hoboken Land Co.*, 18 How. 272; *Twining* v. *New Jersey*, 211 U. S. 78; *Reeves*

v. *Ainsworth*, 219 U. S. 296; *United States* v. *Grimaud*, 220 U. S. 506; *Blinn* v. *Nelson*, 222 U. S. 1; *United States* v. *B. & O. S. W. R. R.*, 222 U. S. 8; *Standard Oil Co.* v. *Missouri*, 224 U. S. 270; *Jordan* v. *Massachusetts*, 225 U. S. 167; *Procter & Gamble* v. *United States*, 225 U. S. 282, 297; *Int. Com. Comm.* v. *U. P. R. R. Co.*, 222 U. S. 541, 547; *Int. Com. Comm.* v. *Ill. Cent. R. R.*, 215 U. S. 452; *Arkansas Rate Case*, 187 Fed. Rep. 290; *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. 362, 397; *Smyth* v. *Ames*, 169 U. S. 466, 541, 544, 547; *St. L. & San F. Ry.* v. *Gill*, 156 U. S. 649, 657, 665; *Minneapolis &c. Ry.* v. *Minnesota*, 186 U. S. 257, 266, 268; *Covington Turnpike Co.* v. *Sandford*, 164 U. S. 578, 594; *Tex. & Pac. Ry. Co.* v. *Abilene Cotton Co.*, 204 U. S. 426, 444; *Southern Ry. Co.* v. *St. Louis Hay Co.*, 214 U. S. 297, 301; *Int. Com. Comm.* v. *Burnham*, 218 U. S. 88, 111; *Atl. Coast Line* v. *Nor. Car. Corp. Comm.*, 206 U. S. 1, 24, 25; *Int. Com. Comm.* v. *Chi., R. I. & P. Ry.*, 218 U. S. 88, 102; *Int. Com. Comm.* v. *Chi., B. & Q. R. R.*, 218 U. S. 113; *Ill. Cent. R. R. Co.* v. *Int. Com. Comm.*, 206 U. S. 441; *Cincinnati &c. Ry.* v. *Int. Com. Comm.*, 206 U. S. 142, 154; *Int. Com. Comm.* v. *Un. Pac. Ry. Co.*, 222 U. S. 415, 446.

Mr. Frederick M. Hudson for the Railroad Commissioners of Florida:

This case is not controlled by *Smyth* v. *Ames*. It is not a case in which the value of the property is the proper basis of calculation as a test of reasonableness. Petitioner's theory of the case is therefore wholly erroneous.

The cost of the service rendered would have been a sounder basis of calculation in this case, and petitioner has not met that requirement.

Petitioner might have used the average freight receipts as a test, but has not met that requirement.

Even if this case were controlled by *Smyth* v. *Ames*, the petitioner is not within the terms of that rule because

there is no separation or apportionment of interstate and intrastate business.

Even if this case were controlled by *Smyth* v. *Ames* the petitioner is not within the terms of that rule because its theory of the case assumes that the carrier is entitled to a profit on its investment regardless of qualifying circumstances.

Mr. A. A. Boggs filed a brief for the Florida Fruit and Vegetable Shippers' Protective Association and the East Coast Fruit and Vegetable Growers' Association, intervening appellees.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

The order of the Interstate Commerce Commission concerning which the appellant, hereafter called the East Coast Line, complained before the court below and which that court refused to enjoin was made on a second supplemental petition presented in controversies which had been long pending and twice before decided, such controversies involving many railroads and being concerned with the rates as to pineapples, citrus fruits and vegetables from places of production in Florida to exterior points of distribution or consumption. While the report here under consideration made on the second supplemental petition deals with only a few of the railroads concerned in the previous inquiries and with only a part of the controversies involved in the previous cases, yet the reports in the previous cases and the reasons stated by the Commission for its action in those cases are so connected with its action complained of in this case that it is impossible to understand this controversy without recurring to and stating the previous reports of the Commission in the controversies to which we have referred.

We observe before coming to make that statement that none of the testimony taken before the Commission in the cases prior to this one is in the record, it having been stipulated that the facts stated by the Commission in its reports in such previous cases should be taken as the facts of such controversies. For the purpose of the statement which we shall make the record therefore consists of the reports in such previous cases, of the report in this case and the testimony taken in this case before the Commission and in the court below. The future application of the facts which we shall state will be facilitated by giving a description of the East Coast Line as stated in the several reports of the Commission to which we shall immediately recur.

The East Coast Line is wholly within the State of Florida, the main line extending from Jacksonville south along the Atlantic coast to Miami, a distance of 366 miles, then to Homestead, 28 miles south, and thence across the Florida Keys to Key West. At the time of the final hearing before the Commission on March 2, 1911, the road was not fully constructed and was only completed and being operated to Knight's Key, about 83 miles below Homestead. The total mileage of the road was about 583 miles, including 477 miles of main line from Jacksonville to Knight's Key and about 106 miles of branch line above Miami. The cost of the construction from Homestead on was enormous, amounting to nearly $175,000 per mile, and the total cost of the extension from Homestead to Knight's Key, 83 miles, nearly equalled the entire cost of the balance of the road, 500 miles. On July 3, 1907, a petition was filed by the Florida Fruit & Vegetable Shippers' Protective Association against the Atlantic Coast Line, the Seaboard Air Line and Southern Railway Companies and the East Coast Line complaining of and asking a reduction in interstate rates on pineapples, citrus fruits and vegetables. The East Coast Line was the only one

of the defendant railroads whose traffic was confined to the producing regions in Florida because while the other lines also undoubtedly penetrated to the area of production, their lines were not confined to Florida but were trunk lines carrying not only the product committed to them by producers in Florida, but also the products committed by producers to roads like the East Coast Line which did not extend beyond Florida and had therefore to be transshipped if destined to points beyond the State by other roads. In coming to make its report in the case thus referred to, the Commission thus stated the general situation of the railroad traffic of all the roads in Florida concerning the subjects under discussion (No. 1168, 14 I. C. C. 483):

"The shape and location of the state of Florida is such that these railroads which handle this traffic from the point of production up to the base point necessarily do but a limited business. They extend south considerable distances through a sparsely settled country which neither originates nor consumes a considerable amount of traffic. Some of them reach the seacoast, but none of them connect or can connect with railroads leading beyond, and the amount of through business handled is extremely light. Their traffic is confined almost entirely to bringing out the products which originate upon their lines, and carrying in the supplies which are consumed in the territory served by them. Fruits and vegetables, lumber, naval stores, and in some cases cotton and phosphate rock are the principal commodities carried, and of these, fruits and vegetables produce the most revenue."

In the report by which the Commission disposed of this controversy (No. 1168, 14 I. C. C. 476) it divided the rates to be considered into two classes: (a) gathering charges from production points in Florida to base points of which Jacksonville was the only one on the East Coast Line, and (b) rates from base points to points of final

destination in other States, the sum of the two rates being the joint through rate.

Considering the three products whose traffic charges were under consideration, the Commission said:

(a) Citrus fruits:

"From an examination of the elaborate figures which were introduced upon the trial showing the character of the traffic handled by these Florida roads, the conditions under which it is handled, their earnings, and the cost of operation running through a series of years, it is difficult to see how these railroads can be expected to transport in a suitable way this fruit and vegetable traffic from points of production to these basing points for a less sum than they now receive. It is difficult to see how, even upon the present traffic, those lines can in the immediate future expect to pay any considerable return upon their investment. We feel that these local rates, although they are high in comparison with other local rates, are as low as should be established under all the circumstances." (p. 484.)

(b) Vegetables:

"The same observations which have been made upon the orange rates to base points apply with equal pertinency to those upon vegetables. They are named by the railroad commission of Florida. They are made with the understanding that they are really parts of through rates from the point of production to the market of consumption. They are low in comparison with other rates because it is understood that this industry is an important one to the State of Florida, and that a low cost of transportation is essential to its development.

"While these local rates are essentially part of the through charge and should be dealt with by this Commission as such, it is difficult to see how these Florida railroads can render a proper service upon a lower scale of rates than is now applied. It must be remembered that without the railroad this industry could not exist at all, and that

to its satisfactory carrying on the character of the service is fully as important as the rate. It is better that these fruits and vegetables should reach the market on time, and in good condition, than that a few cents per box should be subtracted from the carrying charge. There was very little complaint as to the service; nor did the shippers who testified manifest any desire that these carriers should be required to accept less than reasonable compensation for that service. Our conclusion upon this branch of the case is that the present rates up to the base points, while high in comparison with similar rates in other localities are as low as they ought to be under the conditions obtaining upon these Florida lines, so that here, as in case of oranges, the real question arises upon the rate from the base point to the northern market." (p. 496.)

(c) Pineapples:

"Pineapples are mainly produced in Florida, upon the line of the Florida East Coast Railway, which extends, as already said, down the east side of Florida. This industry has within recent years developed rapidly. Florida pineapples today sell in all the markets of the United States in competition with foreign pineapples, usually commanding much higher prices than the foreign article. While the period of production in the United States and in Cuba is not exactly the same, still it may fairly be said that the two products do compete.

"It was said that Jansen might be selected as a typical producing point upon the Florida East Coast Railway. This station is 257 miles south of Jacksonville and the rate on pineapples is 24 cents per box of 80 pounds. Rates from other points are relatively about the same as from Jansen; somewhat lower, it will be seen, for the same distance, than from most producing points upon oranges." (p. 502.)

Presumably, deeming that the particular situation on the East Coast Line as to the character of its business, its

location, its cost, etc., etc., required to be specially pointed out in addition to what was said in the passages quoted, the Commission said:

"The Florida East Coast Railway was built as part of a hotel scheme, and its principal business is the carrying of passengers who frequent these Florida winter resorts. Over 50 per cent. of its total receipts are from passenger traffic. Its most important freight business is the transportation of fruits and vegetables, and of these pineapples afford the most considerable amount of revenue. The management of the railroad has paid great attention to the development of this business. In the pineapple region highways are few and transportation by wagon is therefore costly. To relieve this difficulty sidings have been put in the pineapple region at frequent intervals. The traffic representative of this railroad stated that it was possible to load pineapples every half mile upon his line in the pineapple-producing region. When once loaded great attention is paid to sending the fruit to Jacksonville upon a reliable and expeditious schedule.

"Very elaborate tables were introduced showing the cost of constructing this railroad and the financial results of its past operations. These statements and tables have been examined by the Commission, but it does not seem necessary to reproduce them here or to state in detail the grounds of our conclusions. But for this railroad the pineapple industry in Florida would not today exist. The quality of the service rendered that industry by this road is not criticised. The shippers of this fruit ought not to object, nor do they object to paying a fair compensation for the service, and in our opinion the present rates do not exceed such just compensation for the transportation of pineapples from various producing points to Jacksonville, and we so hold." (p. 503.)

And concerning the earnings of the East Coast Line, it was said:

"The total earnings of the Florida East Coast Railway for the same year (ending June 30, 1907) were $5,911 per mile, and its operating expenses $4,502. The greater part of the receipts of this railroad are from its passenger service. The evidence shows that a considerable portion of what little freight revenue it has comes from the transportation of fruits and vegetables. It has given in the past great attention to this service, and has apparently satisfied its patrons in this respect. It makes no through rates, but receives its full local in all cases up to Jacksonville." (p. 484.)

Giving effect to the foregoing, the Commission held that the complaint as to gathering charges was wholly unfounded, and they were maintained. A different conclusion, however, was reached as to charges from the base points to points of distribution or consumption, as to which some reduction was made. It consequently follows that all the other roads who were defendants were subjected to some reduction as to their rates, while the East Coast Line because of its being a purely gathering road was subjected to no reduction whatever.

Within a year after this action by the Commission the same complainant commenced a new proceeding (No. 2566) against two hundred railroads, including among others the East Coast Line, to establish carload rates from base points in Florida to interstate points. At the same time in No. 1168, which as we have seen had been previously passed upon by the Commission and decided in favor of the East Coast Line, a supplemental petition was filed against that road, the sole complaint against the East Coast Line in such petitions being as to its gathering rates on pineapples from points of production to Jacksonville. And it is to be presumed that the complaint as to pineapple-gathering rates was made only against the East Coast Line because as we have seen, as stated by the Commission, that road was almost the exclusive carrier of such

product, and in fact had virtually built up that industry. The controversy while it involved a claim of reduction, in its broad aspect presented only a controversy as to whether there should be put in force carload and less-than-carload instead of any-quantity rates in the performance of its duty of gathering pineapples. On the filing of the new and original as well as of the supplemental petition the Commission directed the rescinding of its previous order concerning the reasonableness of gathering rates, as well as its finding on the subject of rates from base points and directed the matter to be reheard. Without referring to the conclusion of the Commission concerning the controversy as to the many railroads who were before it as to their interstate rates, we come to state the ruling of the Commission as to the East Coast Line (17 I. C. C. 552, 564):

"The evidence produced upon the present hearing suggests no change in what was said so far as that applies to the Florida East Coast Railway. That line operates at the present time 477 miles of main line and 106 miles of branches. It has a first mortgage of $10,000,000, a second mortgage of $20,000,000, and a capital stock of $3,000,000, making in all $33,000,000. This capitalization, with the exception of about $4,000,000, represents an actual cash investment.

"It is urged by the complainant that the portion of the line from Miami south, which has cost some $14,000,000, was not at the present time a paying investment and that the balance of the line from Jacksonville to Miami, which is used by the growers of pineapples, ought not to be taxed with the cost of this construction. Admitting this to be so and laying out of view altogether the $14,000,000 which have been invested in that part of the property, it is still true that during the entire existence of the Florida East Coast Railway, so far as this record shows, that property has never earned in any single year 6 per cent. upon the money invested, with the single exception of the year 1909.

During much of the time its net earnings have been but little above its operating expenses. We certainly cannot hold that these rates should be reduced because for a single twelve months, under what may be termed abnormal conditions, this railway earned about 6 per cent. on the money which has been actually invested in its construction. The years when no return has been received must certainly be given some consideration. Upon no other theory could private capital be induced to invest in the construction of railroads.

"While, however, we adhere to what was said in the previous case, we do think, upon more careful examination, that these rates of the Florida East Coast Railway on pineapples ought to be somewhat revised. They are not consistent with one another, and in our opinion those from the more distant points are too high as compared with rates from nearby points.

"The present rates are in any quantity. About 60 per cent. of these pineapples move from the point of origin in carloads, 40 per cent. in less than carloads. Carload shipments are stripped and loaded by the shipper and are not unloaded at Jacksonville, which probably saves the carrier not far from 2 cents per box. The less-than-carload shipment is loaded by the railway and usually unloaded at the station in South Jacksonville or Jacksonville. In our opinion carload rates should be established which are less than the present any-quantity rates by 3 cents per box.

"The establishment of such carload rates will not of a certainty work a decrease in the net earnings of the carriers. It is a false theory of transportation which seeks to force the shipper to avail himself of a less-than-carload service, which is more expensive to render, for the purpose of increasing the gross revenues of the carrier. The true object should be to perform the service in the most economical manner and to charge for that service reasonable compensation. In the end this makes to the advan-

tage of both the carrier and its patron. The vice-president of the Florida East Coast Railway stated that he had always thought that carload rates should be established and that in his opinion to establish carload rates 3 cents per box less than the present any-quantity rates would not prejudice the net revenues of his company, since he would make up by saving in operating expenses what he lost in gross income."

The order of the Commission which gave effect to these views entered February 8, 1910, changed gathering charges on pineapples and citrus fruits on the East Coast Line from any-quantity to carload and less-than-carload rates and modified the mileage basis. On attention being directed to the fact that the complaint related only to pineapples, while the order applied to that product and to citrus fruits, the order was modified and restricted to the subject complained of, pineapples. The East Coast Line conformed to the order and indeed shortly after doing so also voluntarily put into effect carload and less-than-carload gathering rates on citrus fruits and vegetables, and although the rates thus fixed were somewhat higher than the rates on pineapples which the Commission had established, they were lower than the citrus fruit and vegetable rates which had been expressly sustained by the Commission. Some months after this was done the same complainant who had filed the previous petitions presented in No. 1168 a second supplemental complaint against the East Coast Line, and new petitions against the Seaboard Air Line and Atlantic Coast Line Railways (No. 3808). So far as the East Coast Line was concerned the complaint was against the citrus fruit and vegetable-gathering rates and asked that they be equalized with or made the same as the pineapple rate. The Florida Railroad Commission intervened and asked the same relief. The Commission in effect granted the prayer of this second supplemental complaint, found the rates of the East Coast Line on

citrus fruits and vegetables to be unjust and unreasonable, and directed the putting into operation of a lower stated schedule of gathering rates which was made applicable not only to the East Coast Line but also to the other roads which were parties to the proceeding. And it is this order which the railroad refused to obey and to enjoin the enforcement of which this suit was brought.

Without going into detail it suffices to say that the report of the Commission concerning the action just stated did not purport to question the correctness of its previous findings sustaining the citrus fruit and vegetable rates of the East Coast Line, but was based upon what was deemed to be a change in conditions since the previous decisions. After pointing out that it had previously ordered a change from any-quantity to carload and less-than-carload rates on pineapples from gathering points to the base point on the East Coast Line and on all fruits and vegetables from base points outward, and that on both the Atlantic Coast Line and the Seaboard Air Line any-quantity rates yet remained from gathering points as to all fruits and vegetables, although such was not the case as to the East Coast Line because of the change which it had voluntarily made, it was said (22 I. C. C. 11, 14, 15):

"No material change has taken place since then (that is, since the previous decisions) so far as this record discloses which would lead to a different conclusion if the same subject were before us today. The volume of business transacted has increased, but the expenses of operation have also increased to an extent which offsets the greater amount of business. . . .

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"It appeared in the original case that citrus fruits to some extent, and vegetables to a much greater extent, were shipped in small lots to Jacksonville and there reloaded for movement beyond. It was our impression in

establishing carload rates from the base point that this would permit the movement in small lots up to the base point and the consolidation at such point, and that the carload movement would in fact be mainly beyond the base point. Such has not been the result. In order to obtain the carload rate beyond the base point it seems to be necessary for the shipper, in actual practice, to present a full carload at the point of origin, and from this it follows that the movement up to the base point at the present time is entirely different from what it was when we approved these any-quantity rates. At that time the loading was by the carrier; now it is mainly by the shipper. The loading of the cars from the point of origin to the base points is much heavier now than formerly. In 1907 the average loading of citrus fruits and pineapples upon the Atlantic Coast Line up to the base point was 215 boxes. In 1910 this loading had increased to 279 boxes. In case of vegetables the increase is even more marked. The number of cars now required to transport the same amount of this traffic from points of origin to base points would be materially less than in 1908. Otherwise stated, it costs the shipper more to handle his business today and it costs the railroad less."

And upon that changed circumstance an order was awarded directing the change from any-quantity to carload and less-than-carload and fixing a rate which was the same as that previously fixed for pineapples. Of course, as the East Coast Line had voluntarily put in carload and less-than-carload rates, it was only affected by this order to the extent that it lowered the traffic charge as contained in the schedule which had been previously voluntarily established.

It is insisted that the order of the Commission was wrongful and that the court below erred in not restraining its enforcement for the following reasons: (a) because the order complained of was rendered without any evidence

whatever to sustain it; (b) because it confiscated the property of the railway in a two-fold aspect, first, by fixing a rate so unreasonably low as to afford no remuneration to the corporation for the use of its property, and second, because although the Commission in order to justify the rate which it fixed took into account the revenue derived from the extended road, it nevertheless declined to at all consider the value of the extended road and the right to earn a return thereon. We come as briefly as possible to consider these contentions separately.

(a) *That there was no evidence whatever tending to sustain the reduction of the rates on citrus fruits and vegetables as to the East Coast Line which the Commission ordered.*

While a finding of fact made by the Commission concerning a matter within the scope of the authority delegated to it is binding and may not be reëxamined in the courts, it is undoubted that where it is contended that an order whose enforcement is resisted was rendered without any evidence whatever to support it, the consideration of such a question involves not an issue of fact, but one of law which it is the duty of the courts to examine and decide. (*Int. Com. Comm.* v. *Louis. & Nash. R. R.*, 227 U. S. 88, 91, 92, and cases cited.)

In view of what we have said concerning the state of the record, the solution of the question must depend upon an examination and analysis of two subjects, the one the reports of the Commission in the previous cases, and the other, the testimony which was before it and the report made in this case. As to the first, in view of the statements made by the Commission in its report in the original case (No. 1168, 14 I. C. C. 476) as to the earning power of the road, the nature of its business and the reasonableness of its rates and the express finding that the citrus fruit and vegetable rates were just and reasonable and should not be changed and the further fact that they were not called in question in the second proceeding it

follows that the inquiry narrows itself to the mere consideration of the testimony taken in this proceeding, and the report of the Commission in such proceeding, and the testimony taken before the court below in so far as it is proper to consider it in connection with the particular question under consideration. But coming to make a review of the testimony before the Commission on the issue raised by the second supplemental petition, we fail to find the slightest proof tending to sustain the reduction in rates as to the East Coast Line, which was made.

There are only three subjects referred to in the testimony which can in any view be considered as having any possible tendency to show such a change as would cause the rate which was found by the Commission in the past reasonable and not to justify a change to be unreasonable and therefore require reduction. The three subjects are these: (a) testimony by the chairman of the Florida Railroad Commission that there had been a considerable increase in the volume of traffic in citrus fruits and vegetables since the previous finding; (b) a further statement or admission made by an officer of the East Coast Line in a colloquy which took place at the hearing in this case to the effect that as shippers under carload rates loaded their own cars there was some difference in cost to the advantage of the road over the cost of loading when the any-quantity rates prevailed; (c) testimony with reference to the Atlantic Coast Line and the Seaboard Air Line (but none as to the East Coast Line) to the effect that on those roads it had come to pass that there was a saving in expense and an increase in earning capacity because even under the any-quantity rates carload shipments had greatly increased and cars so shipped were much more heavily loaded and moved from the point of production through the base point to their ultimate destination, when such was not the case at the time the previous order was made. Testimony which as we have seen was expressly

declared by the Commission to be in effect the cause which gave rise to the reduction. But at once it is to be observed that so far as any inference alone from the difference between carload and less-than-carload rates and any-quantity rates is concerned it had no application to the East Coast Line since that road had put in the carload and less-than-carload rates while the other two roads had not. And so far as the consideration of the increased loading is concerned as stated by the Commission, whatever may have been the proof as to the Seaboard Air Line and the Atlantic Coast Line, it is beyond controversy that no such proof can be found in the record as to the East Coast Line except the vague intimation to which we have referred.

Thus by analysis the case comes to this: Did the facts as to the increased loading which the Commission found to exist in the case of the Seaboard Air Line and the Atlantic Coast Line support or tend to support the order as to the East Coast Line in the absence of all testimony in the record concerning the existence of such fact as to the traffic on that road? In other words, the question is, Because there was testimony as to the traffic of those roads, can such testimony be said to tend to establish the same condition on the East Coast Line? Conceding that from an abstract point of view an affirmative answer would have to be given to such question we think such is not the case here for the following reasons: (a) because of the difference in business carried on by the two roads named and the East Coast Line, they being not only gatherers of the local product but trunk line carriers; (b) because of the difference in the situation and traffic of the two trunk lines named and the East Coast Line, as deduced solely from the peculiar environment and movement of business on that road so aptly stated in the passages from the reports of the Commission which we have quoted. Differences which presumably gave rise to

separate statements in the previous reports in considering that road. While we do not say that the conclusion is affirmatively sustained, nevertheless we think the state of the record at least tends to give some support to the suggestion in the argument that the greater magnitude and importance of the consideration of the business and rates of the two trunk line carriers concentrated attention in that direction and therefore caused the inquiry on that subject and the facts concerning the same to eclipse the distinctions between those lines and the East Coast Line—distinctions which if otherwise taken under consideration should have produced a different result.

As it follows from these views that the order in question as to the East Coast Line and its enforcement should have been enjoined by the court below, our duty is to reverse the action of that court and to remand the case to the proper District Court with directions to grant the prayer of the East Coast Line and restrain the enforcement of the order in question and it is so ordered.

Reversed.